

# Morgan Stanley presses recruiting case against UBS broker

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## Morgan Stanley pursues former broker accused of trying to 'guilt' client into moving to UBS

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An ex-Morgan Stanley broker accused of trying to "guilt" a client into following him over to UBS Group has agreed to cease soliciting his former customers pending a dispute resolution before a FINRA arbitration panel.

James Tuminello, a broker and registered investment advisor with 25 years of experience, was at a Morgan Stanley office in Seattle until July 28, when he resigned to take a position at UBS Financial Services. According to Morgan Stanley's civil complaint filed in Washington

State district court in Seattle, Tuminello took client account information with him and went on to meet with former clients despite having signed agreements saying he would do neither.

Morgan Stanley says Tuminello oversaw nearly \$600 million in client assets and produced more than \$2.8 million in annual revenue. The complaint states Morgan Stanley has reason to believe UBS has offered to pay Tuminello more than "\$1.7 million in upfront, cash bonuses," and "potentially hundreds of thousands of dollars or more in 'back-end' bonuses based on assets transferred by, or revenue generated from, the Morgan Stanley clients."

A UBS spokesperson declined to comment on the case. Lawyers for Tuminello didn't respond to questions sent by email and left on voicemail.

A Morgan Stanley spokesperson said, "Morgan Stanley will take appropriate action to ensure that departing employees comply with their legal obligations."

Tuminello agreed to Morgan Stanley's request for a temporary injunction on his ability to solicit former clients on Aug. 10. His filing was first reported by AdvisorHub.

The fairness of nonsolicitation agreements has come into question amid debate on a Federal Trade Commission proposal to ban related but distinct noncompete clauses. State lawmakers have been pushing forward with their own proposed prohibition on noncompetes, which generally prevent employees from working for a rival firm within a set period of time and geographic distance after resigning.

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Any ban on noncompete clauses is likely to have little effect on the sorts of nonsolicitation agreements many wirehouses and other firms insist brokers and advisors sign to prevent them from reaching out to former clients should they take a job with a competitor. Morgan Stanley has both pursued other firms for alleged nonsolicitation violations and been the subject of similar accusations.

According to Morgan Stanley's complaint, Tuminello tried to "guilt" one former client into following him to UBS by reminding her that he was with her when her husband died. Morgan Stanley also accused Tuminello of telling the client that the Morgan Stanley broker who had taken over her account was "inexperienced" and had "never been through a bear market." When he met with another former client, according to Morgan Stanley, he had brought with him paperwork needed to transfer his account to UBS.

In a declaration entered in court on Aug. 8, Tuminello said he had no knowledge of bringing confidential information with him to UBS. He also said he established his relationship with the clients he's accused of trying to poach before joining Morgan Stanley, when he had been at Wells Fargo.

"For the pre-existing clients, I was able to announce my move to UBS using the

contact information I had obtained prior to my commencing employment with Morgan Stanley," he said. "For the clients who were not pre-existing clients and with whom I first worked at Morgan Stanley, I did not retain any contact information. To reach out to these clients, I and others at UBS made use of publicly available resources such as white pages."

Morgan Stanley made waves in the industry in October 2017 when it became the first big wirehouse to announce it was leaving the Broker Protocol, a legally binding pact meant to ensure advisors and their clients can move seamlessly from one firm to another. Morgan Stanley's exit from the protocol was followed by UBS a month later, further adding to the barriers wealth managers must overcome when looking for employment elsewhere.

Tuminello's agreeing to an injunction means his case's next stop is before an arbitration panel administered by the Financial Industry Regulatory Authority, the brokerage industry's self-regulator.

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Raymond Henney, a securities lawyer and co-leader of the Detroit-based firm Honigman's broker-dealers and investment advisors industry group, said Tuminello and his lawyers accomplished two goals by agreeing to the temporary injunction. First, they avoided the risk of discovery and deposition-taking as part of the court proceedings. Depositions, Henney said, are permitted under FINRA rules only under extraordinary circumstances and are uncommon in arbitrations.

Second, Tuminello and his lawyers avoided the risk that the judge overseeing the case would have found that Morgan Stanley's chances of prevailing were strong — a necessary step to obtaining a permanent injunction. In other words, Henney said, he doesn't have to face the prospect of appearing before a FINRA arbitration panel with Morgan Stanley being able to say "a judge has already determined we have a likelihood of success."

According to Morgan Stanley, Tuminello wasn't the only broker who was considering leaving for UBS. Spencer O'Brien, who had worked on a team with Tuminello, had contemplated a similar move but ultimately pulled back in part over concerns that Tuminello planned to take confidential information, says the complaint. Attempts to reach O'Brien were unsuccessful.

In his declaration, Tuminello said he had told O'Brien at one point that he had a Morgan Stanley client list from May this year.

"That said, this list was not generated as a means of preparing for my move to UBS," according to the declaration. "Rather, both Mr. O'Brien and I used that list for the benefit of Morgan Stanley, to check in on our clients."