

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

POMPANO SENIOR SQUADRON FLYING CLUB, INC.
(aka POMPANO BEACH FLYING CLUB)

Plaintiff,

and

CARL L. KENNEDY, II

Defendant.

Case No.: CACE 20-005993
Division (8)

**RESPONSE TO PLAINTIFF'S
MOTION REGARDING COURT ORDERED MEDIATION**

TO THE HONORABLE JUDGE OF THIS COURT:

I, Carl L. Kennedy, II, respectfully request appropriate and just relief from this Court in connection with Plaintiff's Motion Regarding Court Ordered Mediation, and as reasons therefore, state as follows:

1. Plaintiff's continued lack of honesty with this Court is both astonishing and alarming. In this instance, Plaintiff misleads this Court and mischaracterizes my efforts regarding mediation.
2. Plaintiff neglects to inform the Court that almost immediately following the hearing before this Court on July 14, 2020 (at which time Plaintiff's Motion for Default was denied and my Motion for Extension of Time was granted), Wendy Hausmann, Esquire, contacted counsel for Plaintiff on my behalf to extend an "olive branch", and offered to coordinate mediation for this case to take place within 20 days, rather than the 45 which was granted by the Court. Given Plaintiff's assertions that they "can't effectively operate" without whatever it is they claim they need from me, I expected a positive response to this communication by Ms. Hausmann.
3. Counsel for Plaintiff instead stated that his corporate client "does not want to play nice in the sandbox" with me. See Exhibit A, attached hereto, email from Wendy A. Hausmann, Esquire to counsel for Plaintiff dated July 14, 2020.
4. Plaintiff also neglects to inform the Court that I offered any time of day on any day of the week of August 24, 2020, for the mediation. See Exhibit B, attached hereto, email from me to counsel for Plaintiff dated July 21, 2020.

5. Plaintiff asked me to provide the name of a mediator and I promptly did so. Plaintiff has given no basis for their rejection of Douglas Greenbaum, Esquire, a certified Circuit Civil mediator who will only charge \$200 per hour to mediate this case. I have never spoken to, met or am in any way acquainted with, Mr. Greenbaum. Conversely, the mediators suggested by Plaintiff all have fees closer to or more than \$300/hr., in addition to contact about this case and a prior relationship with counsel for Plaintiff, as is evident by the email sent to counsel for Plaintiff, and actually contained as part of Plaintiff's Motion. In that light, I already feel disadvantaged because Plaintiff has perhaps already instilled a bias or predisposition in the proposed mediators he selected.

6. Given both Plaintiff's admitted position of not wanting "to play nice in the sandbox", in addition to counsel for Plaintiff's prior dishonesty with this Court in submitting to the Court an "Agreed Order" which I had never seen before it was submitted to and signed by the Court (which is being investigated by The Florida Bar), I reasonably do not trust Plaintiff, or Plaintiff's counsel, to act professionally or honestly.

7. Plaintiff also neglects to mention that I offered to use any mediator they wished if they would agree to pay the difference between Mr. Greenbaum's fee and the fee of any other mediator they may choose. Plaintiff rejected that, too. See Exhibit C, attached hereto, email from me to counsel for Plaintiff dated July 22, 2020.

8. Plaintiff filed their Motion prematurely, with a full day and a half still remaining to attempt to find a solution so as to comply with the Court's Order to coordinate mediation. Plaintiff did not even attempt in good faith to resolve this issue. They simply took a position, once again, that it is "their way or the highway".

9. Plaintiff, who has complained that they "can't effectively operate" because this case hasn't moved forward quickly enough, is now requesting an extension of the time within which mediation can take place, thereby extending and prolonging the progress of this case. This should be taken into consideration in assessing Plaintiff's claim.

10. Plaintiff is wasting corporate assets due to its uncooperative and bad-faith litigation practices.

11. If Plaintiff "does not want to play nice in the sandbox", I should not be prejudiced by the imbalance of financial power that a corporation presents to me as an individual and self-representing party.

12. Plaintiff has now also filed a Motion to Disqualify the attorney they know I want to represent me. Plaintiff is attempting to force me to proceed pro se or hire counsel I can't afford.

13. Plaintiff should be required to pay the entire cost of mediation in this matter, both as a sanction and/or because they are in a substantially better financial position than I am to pay the fees for a private mediator, especially as it is my understanding that mediations can sometimes last for several hours. I cannot commit to a mediator and incur fees that will likely be beyond my financial means.

14. The Court should know that Plaintiff is using my ongoing Club membership fees to pay its counsel and fund this litigation. I should therefore also reasonably be allowed to use my ongoing monthly Club membership fees to contribute or fully pay for the mediation fees.

15. I believe I have been very reasonable in attempting to work with Plaintiff to coordinate mediation. I have given Plaintiff carte blanche with respect to date and time for an entire week, I gave them carte blanche as to selection of a mediator. I only placed reasonable limits on the fees I am able to incur for mediation. Conversely, Plaintiff has been entirely unreasonable, completely failing and refusing to offer any compromise or solution whatsoever.

16. This Court should appoint a mediator unknown to either party, should require Plaintiff to pay the entire cost of the mediation, should instruct Plaintiff and its counsel not to communicate with any mediator in this case prior to the mediation, except for scheduling purposes, and all other relief this Court deems proper.

WHEREFORE, I, Carl L. Kennedy, II, respectfully request all relief consistent with the facts and circumstances contained herein.

I hereby certify that on this 28th day of July, 2020, a true and correct copy of the foregoing has been served to Edward Holodak, Esquire via the Florida e-portal.

Respectfully submitted,

/s/ Carl L. Kennedy, II
Carl L. Kennedy, II
2929 S. Ocean Blvd., #510
Boca Raton, FL 33432
304-552-0206
E-Mail Address: clktax@aol.com

From: hausmannw@aol.com,
To: edward@holodakpa.com,
Cc: clktax@aol.com,
Subject: Our telephone call after the Hearing this morning
Date: Tue, Jul 14, 2020 11:34 am

Mr. Holodak:

This will confirm that I called you almost immediately after the Hearing this morning to "play nice in the sandbox" and offered to mediate this case in the next 20 days (before Mr. Kennedy's responsive pleading is due in 30 days) rather than your client having to wait 45 days. In response, you advised me that your client "does not want to play nice in the sandbox" and objects to my accompanying Mr. Kennedy to mediation. You further advised that you would be filing a Motion to Disqualify me tomorrow and would be setting such Motion on Motion Calendar. I will object to your Motion to Disqualify me as being inappropriate for Motion Calendar, as such a Motion will clearly require testimony and other evidence. Kindly ensure that you coordinate an evidentiary hearing with both myself and Mr. Kennedy. I will have at least two (2) witnesses (in addition to Mr. Kennedy and myself) and I believe I will need 45 minutes to defend against such a Motion. If you need equal time, kindly obtain dates and times for a 90-minute hearing.

It seems antithetical to your client's alleged purpose in resolving this matter and obtaining whatever they need from Mr. Kennedy that they believe he has, to oppose my attendance at a mediation, as Mr. Kennedy would be within his rights, if he must go alone, to simply keep his mouth shut at a mediation if he is unable to have me there to participate. Is that what your client wants? To prolong this matter further? Again, this belies anything other than a witch-hunt of Carl Kennedy, rather than a legitimate business purpose.

I will await your Motion to Disqualify.

Wendy A. Hausmann

Exhibit A

From: clktax@aol.com,
To: CLKTax@aol.com,
Subject: Mediation - PBFC v Kennedy
Date: Fri, Jul 24, 2020 3:38 pm

-----Original Message-----

From: Carl Kennedy <clktax@aol.com>
To: edward@holodakpa.com <edward@holodakpa.com>
Cc: tammy@holodakpa.com <tammy@holodakpa.com>
Sent: Tue, Jul 21, 2020 3:53 pm
Subject: Re: Mediation - PBFC v Kennedy

Mr. Holodak:

Unless your client is willing to pay the entire expense of a private mediator (after all, they *are* using my money to pay their own mediator fees!), we will need to use a courthouse mediator.

In addition, and given the telephone conversation you had with Ms. Hausmann after the hearing last Tuesday, at which time you rejected her offer to schedule mediation within 20 days, I will be attempting to secure counsel prior to mediation. (Of course, if my Motion to Change Venue is granted, there won't be any mediation.) Therefore, please feel free to schedule mediation with a courthouse mediator for any time of the day on any day during the week of August 24th. Whatever date and time you schedule during that week is agreeable. In compliance with the Judge's Order, I will expect you to advise me as to the date and time you have selected for mediation by the close of business this Friday.

Respectfully,

Carl Kennedy

From: clktax@aol.com,
To: edward@holodakpa.com,
Cc: tammy@holodakpa.com,
Subject: Re: Mediation
Date: Wed, Jul 22, 2020 12:14 pm

Mr. Holodak,

Given my financial constraints, I have done some checking as to private mediators in Broward County (by the way, I am friends with a retired Judge in Broward County).

It is my understanding that Douglas Greenbaum is a well-known and respected attorney mediator in Broward County, and that his fee for mediation in this matter would be \$200 per hour (\$100/party). In that light, I will only be willing to use Mr. Greenbaum, whom I have never met or spoken to or am in any way acquainted with, as a mediator for this case, unless you can find another mediator willing to mediate this case by Zoom for this fee or less. Mr. Greenbaum's telephone number is 561-462-6452. If you can find another mediator willing to charge \$200 per hour or less by Zoom, I will not object to your choice.

I will await your response, however, I will be on an airplane later today and will be unable to communicate with you after 3 p.m.

Respectfully,

Carl Kennedy

Sent from my iPhone

On Jul 22, 2020, at 10:39 AM, Edward Holodak <edward@holodakpa.com> wrote:

Mr. Kennedy

Please see the email from the court mediator department. Court mediation does not handle circuit court cases. Therefore, please provide me the name of a certified mediator that you wish to use (I already provided you my list) so that we are in compliance with the Judge's order.

Thank you.

From: Cristal Cotmon <ccotmon@17th.flcourts.org>
Sent: Wednesday, July 22, 2020 10:35 AM

EXHIBIT C

To: Tammy Pomaranski <tammy@holodakpa.com>

Subject: Re: Mediators

Tammy,

We don't have a program for Circuit Court cases. It would have to go to a private mediator. If you need some names, let me know.

Cristal

Very truly yours,

Edward F. Holodak, Esq., B.C.S
Admitted in Florida & Washington, D.C.

Edward F. Holodak, P.A.
7951 SW 6th Street
Suite 210
Plantation, Florida 33324
(954) 927-3436

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