

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/Counter-Defendant,

and

Case No.: CACE 20-005993

Division (8)

CARL L. KENNEDY

Defendant/Counter-Plaintiff.

ANSWER AND COUNTER-COMPLAINT

I, Carl. L. Kennedy, II, Defendant and Counter-Plaintiff, respectfully represent as follows:

1. I admit paragraphs 1 through 4 of the Complaint, except that I am a resident of Palm Beach County and I was an Officer and member of the Board of Directors starting April 1, 2014.

2. I admit I made payments from Plaintiff's corporate bank account to pay for Plaintiff's expenses (and other financial obligations) which were charged to my American Express credit card.

3. Since the Complaint does not specify the "others" referred to in the last word of paragraph 6, I don't have enough information to either admit or deny paragraph 6 of the Complaint, therefore it is denied and I demand strict proof.

4. I don't have enough information to either admit or deny paragraph 7 of the Complaint, therefore it is denied and I demand strict proof.

5. I admit I received the letter from Plaintiff on or about March 23, 2020, which letter speaks for itself. Otherwise, paragraph 8 of the Complaint is denied.

6. I deny paragraph 9 of the Complaint and demand strict proof.

7. I don't have enough information to either admit or deny paragraph 10 of the Complaint, therefore same is/are denied and I demand strict proof.

8. I deny paragraph 11 of the Complaint and demand strict proof.

9. In response to paragraph 12 of the Complaint, I reallege and incorporate by reference herein as if fully restated, paragraphs 1 through 8 above in my Answer to

Plaintiff's Complaint.

10. I admit paragraph 13 of the Complaint.

11. I deny paragraph 14.

12. I deny paragraphs 15 and 16 of the Complaint and demand strict proof.

13. I deny paragraph 17.

14. I deny paragraph 18 of the Complaint and demand strict proof.

15. The Pompano Beach Senior Squadron Flying Club (a.k.a. Pompano Beach Flying Club) has generated unnecessary litigation.

16. My own continuing monthly membership dues are being used to pay for the Club's attorney's fees in this lawsuit against me. I should be reimbursed in the amount of my monthly Club dues since the inception of this lawsuit. Attorney's fees and costs in this matter should be taxed against the Club, its Officers and members of the Board of Directors, and awarded to me in accordance with any and all relevant Florida law.

17. Plaintiff's Complaint is full of vague, overbroad and general accusations which simply represent a "witch-hunt" and a "fishing expedition", during which they *hope to discover* inappropriate acts or wrongdoing by me; they have not, *and cannot*, make any such specific allegations of wrongdoing on my part as Treasurer or member of the Board of Directors. This factor should be considered by the Court in making any determination concerning Plaintiff's Complaint and Plaintiff's requested relief.

18. Prior to, and as of the date of the filing of this Answer, I had/have already provided Plaintiff with the following corporation documents (in excess of 1,500 pages):

- 1) Articles of Incorporation
- 2) Financial Statements (net of year-end adjustments) at December 31, 2019
- 3) Banking access and records, inc. checkbooks, statements and debit cards
- 4) US Forms 990 - 2016-2017-2018
- 5) Documents relating to insurance coverage
- 6) Documents relating to liens filed
- 7) Documents relating to outstanding loans
- 8) Documents regarding sale of aircraft
- 9) AMEX monthly credit card statements Jan. 2017 thru Feb. 2020
- 10) Electronic copies of various receipts and invoices
- 11) Documents regarding loan to PBFC from Wendy Hausmann, Esq.
- 12) Documents regarding payment of legal fees to Wendy Hausmann, Esq.
- 13) Documents regarding work in connection with By-Law revisions
- 14) Documents regarding refundable buy-in funds to former members
- 15) All PBFC member's initial applications from 4/1/14 thru 2/12/20

19. I advised Plaintiff that I would need additional time to provide all receipts and invoices in my possession for the Club's expenses charged on my AMEX credit card, and Plaintiff agreed to permit me until November 2, 2020 to supplement Item #10 of the list in paragraph 18 above.

WHEREFORE, I, Carl L. Kennedy, II, respectfully request that all relief requested by Plaintiff in its Complaint be dismissed or denied, that I be awarded reasonable attorney's fees and costs in this matter, and for such other and further relief that this Court deems just and proper under the facts and circumstances of this matter.

**COUNTER-COMPLAINT FOR INJUNCTIVE
AND OTHER APPROPRIATE RELIEF**

I, Carl L. Kennedy, II, Counter-Plaintiff and current member/shareholder of Pompano Senior Squadron Flying Club (aka "Pompano Beach Flying Club", "the Club" and "PBFC"), respectfully represent as follows:

1. I restate, incorporate by reference as if fully restated, and request the Court take Judicial Notice of, all of the statements contained in my Motion to Dismiss and/or Strike, to Join Indispensable Parties and for More Definite Statement.

2. I restate, incorporate by reference as if fully restated, and request the Court take Judicial Notice of, all of the allegations and responses contained in my Answer to Plaintiff's Complaint, which is filed simultaneously herewith.

3. I am a resident of Palm Beach County. I am the former Treasurer as well as a former member of the Board of Directors of Counter-Defendant social flying Club (hereafter also "PBFC or "the Club").

4. Counter-Defendant social flying club, at all relevant times was, and is, a not-for-profit corporation pursuant to Florida Statutes §617, operating in Pompano Beach, Broward County, Florida.

5. I am still a member of PBFC and pay monthly dues. I am current in my monthly dues obligation and all other obligations as a member of PBFC.

6. As a current shareholder of the Club, I made a Record Demand of Counter-Defendant on August 11, 2020, pursuant to Fl. Stat. §617. See attached at Exhibit A. No representative of Plaintiff appeared for the Record Demand appointment on August 19,

2020, nor did Counter-Defendant submit any objection or other response to the Record Demand prior to the appointment.

7. I received correspondence from the PBFC President on August 27, 2020, stating he would comply to my record request within five (5) days on behalf of the Club. See attached at Exhibit B. The Club failed to send any documents whatsoever.

8. I made a second identical demand on September 1, 2020 with an appointment date of September 10, 2020. See attached at Exhibit C. No representative of Plaintiff appeared for the Record Demand appointment on September 10, 2020, nor did Counter-Defendant submit any objection or other response to the Record Demand prior to the appointment.

9. As of the date of the filing of this document, PBFC still has not complied with my statutory shareholder record request. However, through Club counsel, Plaintiff has again agreed to comply with my record request by Wednesday, October 7, 2020.

10. I am being prejudiced in my ability to defend myself properly and completely against the PBFC Complaint without the above records I began requesting in August.

11. Counter-Defendant has unclean hands in this matter and should not be permitted to proceed against me unless and until they have complied with my proper, timely statutory record demand(s). The requested records are essential to my defense and are being purposely withheld from me to affirmatively prevent me from being able to fully defend myself against the Counter-Defendant corporation.

12. Counter-Defendant, through its new Board of Directors installed February 12, 2020, has taken inappropriate and illegal actions both without authority and which are contrary to Florida law as well as the corporate documents which govern the Club.

13. The current Officers and Board of Directors stand in a fiduciary relationship to me as a current member and shareholder of the Club. The current Officers and Board of Directors, both individually and together, have violated my rights as a current member and shareholder of the Club.

14. The Counter-Defendant, through its current Board of Directors, is wasting corporate assets and causing irreparable harm to the Club.

15. Counter-Defendant has filed a Complaint against me which amounts to a "fishing expedition" based solely on a personal vendetta and is wasting significant corporate funds in pursuing such Complaint. The individual Officers and members of the

current Board of Directors have, in fact, each provided their own personal funds to the Club solely for the purpose of hiring a lawyer to pursue me.

16. Counter-Defendant is also now the subject of a small claims lawsuit by a former Club member private pilot and his father, the value of which lawsuit is approximately \$2,000. The Court should take Judicial Notice of Hill v. Pompano Senior Squadron Flying Club, Broward County Small Claims Court Case #CONO20010538, filed July 16, 2020. The Club hired the same lawyer that is suing me, both as general counsel for PBFC and to represent the Club in the former member's small claims lawsuit against the Club. The amount of fees being charged by the Club counsel to defend this lawsuit against the Club most likely exceeds the amount of the value of the lawsuit. Therefore, the Club is wasting corporate assets by expending funds for an attorney in this small claim lawsuit against them.

17. The Club owes me \$2,512.52 reimbursement for Club expenses and financial obligations which I paid for with my personal AMEX credit card. I have previously submitted all relevant documentation to the Club in connection with these expenses via the Club's current Treasurer. See attached email to the Club Treasurer dated August 15, 2020 at Exhibit D.

18. Plaintiff has also neglected to continue to make payments on loans I obtained for the Club for the purposes of purchasing aircraft and increasing the value of existing club assets which the Club now enjoys using and providing to all members. The default on the payments for these loans jeopardize the Club's possession of these aircraft, therefore also irreparably harming the Club.

19. The Pompano Beach Senior Squadron Flying Club (a.k.a. Pompano Beach Flying Club) has generated unnecessary litigation.

20. It should be noted that my own continuing monthly membership dues are being used to pay for the Club's attorney's fees in this lawsuit against me. I should be reimbursed for my monthly Club dues in the amount of the attorney fees incurred by PBFC by pursuing me in this case.

21. Attorney's fees and costs should be taxed against the Club and awarded to me in accordance with any and all relevant Florida law.

WHEREFORE, I, CARL L. KENNEDY, II, Counter-Plaintiff, respectfully request

all relief consistent with this Counter-Complaint, including:

A. That the Court enjoin and compel Counter-Defendant, PBFC, to provide me with all properly requested information and documentation in my record requests dated August 11 and September 1, 2020.

B. That the Officers and Board of Directors of PBFC be enjoined from committing corporate waste by frivolously filing, pursuing or defending against lawsuits in connection with the Club;

C. Reimbursement from the Pompano Beach Senior Squadron Flying Club (a.k.a. Pompano Beach Flying Club) in the amount of \$2,512.52 within ten (10) days of the Court's final judgment in this matter;

D. Reimbursement for my monthly Club dues in the amount of the attorney fees incurred by PBFC for pursuing me in this case;

E. Ordering Counter-Defendant to bring current all of its debts and other financial obligations, including any and all outstanding loans made to the Club;

F. An award of my reasonable attorney's fees and costs in this matter; and

G. Ordering such other and further relief that this Court deems just and proper under the facts and circumstances of this matter.

I hereby certify that I sent a copy of the foregoing Answer and Counter-Complaint via the e-portal to Edward F. Holodak, Esquire, on the 5th day of October, 2020.

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: elktax@aol.com

CARL L. KENNEDY, II
2929 S. Ocean Blvd. Ste. 510 Boca Raton, FL 33432
Phone: (304) 552-0206 E-mail: CLKTax@aol.com

August 11, 2020

VIA USPS PRIORITY MAIL

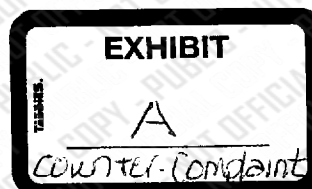
Pompano Beach Flying Club
c/o Mr. Gregory Gilhooly
1421 S. Ocean Blvd.
Suite #102
Pompano Beach, FL 33062

RE: Shareholder/Member Records Request

Mr. Gilhooly:

In accordance with Florida law, I request as a shareholder/member of the Flying Club to inspect the following records at 10:00 a.m., five (5) business days from today, on Wednesday, August 19, 2020, at the above location, or other reasonable time and location designated by you:

1. All accounting records of the Club existing since February 13, 2020;
2. Bank statements for all Club accounts since February 12, 2020;
3. General ledger detail for all Club accounts since February 12, 2020;
4. Documents reflecting the status of all recurring expenses of the Club as to whether current or delinquent, including but not limited to insurances, fuel and hangar expenses;
5. Alphabetized list, with names and addresses of all Club members as of February 13, 2020;
6. Alphabetized list, with names and addresses of all Club members as of the date of the day prior to the date of inspection of these records;
7. Copies of all documents (other than privileged communications) relating to any current lawsuit against the Club by any individual or entity;
8. Invoices/Billing statements for any accountant retained by the Club since February 12, 2020;
9. Invoices/Billing statements for any lawyer retained by the Club since February 12, 2020;



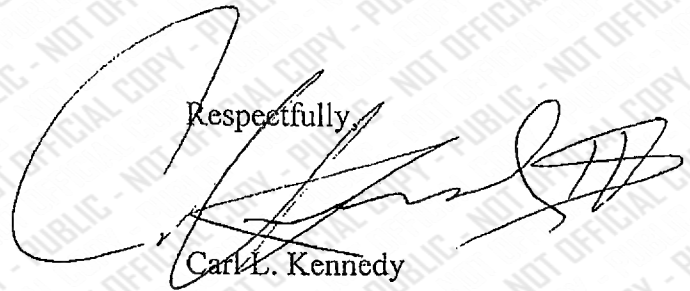
August 11, 2020

Page 2

The purpose(s) of this request is (are) to determine: 1) whether the Club is currently operating at a loss; 2) whether the membership has significantly increased or decreased since the new Board of Directors and slate of new Officers was elected on 2/12/20; 3) to ascertain the veracity of the Treasurer's stated liabilities of the Club as of August 12, 2020; 4) to verify that the monthly ongoing necessary expenses of the Club are still being paid timely; 5) to ascertain how many corporate dollars are being spent on legal fees; 6) to ascertain how many corporate dollars are being spent on accounting fees; 7) to ascertain the contingent liabilities of the Club; and 8) to determine whether or not the club is operating effectively

Thank you for your anticipated cooperation with this Records Request.

Respectfully,

A handwritten signature in black ink, appearing to read 'Carl L. Kennedy', is written over the typed name. The signature is stylized and cursive.

Carl L. Kennedy



August 25, 2020

VIA USPS PRIORITY MAIL

Carl L. Kennedy
2929 S. Ocean Blvd.
Suite 510
Boca Raton FL 33432

RE: Receipt of Request

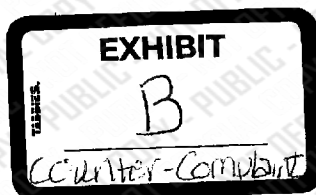
Mr. Kennedy

Please be advised I have received your request on Sunday, August 23, 2020 and will provide you with your requested documents within 5 days of the date I received your request.

I will notify you when the documents will be available and will arrange a method of delivery.

Thank you

Gregory Gilhooly
President, Pompano Beach Flying Club



CARL L. KENNEDY, II

2929 S. Ocean Blvd. Ste. 510 Boca Raton, FL 33432

Phone: (304) 552-0206 E-mail: CLKTax@aol.com

September 1, 2020

VIA USPS PRIORITY MAIL

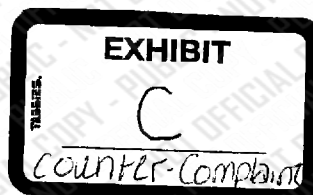
Pompano Beach Flying Club
c/o Mr. Gregory Gilhooly
1421 S. Ocean Blvd.
Suite #102
Pompano Beach, FL 33062

RE: Shareholder/Member Records Request

Mr. Gilhooly:

In accordance with Florida law, this is my second demand as a shareholder/member of the Flying Club to inspect the following records at 10:00 a.m. (more than five (5) business days from today), on Thursday, September 10, 2020, at the above location, or other reasonable time and location designated by you:

1. All accounting records of the Club existing since February 13, 2020;
2. Bank statements for all Club accounts since February 12, 2020;
3. General ledger detail for all Club accounts since February 12, 2020;
4. Documents reflecting the status of all recurring expenses of the Club as to whether current or delinquent, including but not limited to insurances, fuel and hangar expenses;
5. Alphabetized list, with names and addresses of all Club members as of February 13, 2020;
6. Alphabetized list, with names and addresses of all Club members as of the date of the day prior to the date of inspection of these records;
7. Copies of all documents (other than privileged communications) relating to any current lawsuit against the Club by any individual or entity;
8. Invoices/Billing statements for any accountant retained by the Club since February 12, 2020;
9. Invoices/Billing statements for any lawyer retained by the Club since February 12, 2020;



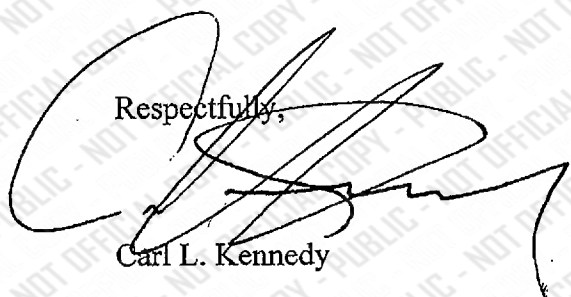
September 1, 2020

Page 2

The purpose(s) of this request is (are) to determine: 1) whether the Club is currently operating at a loss; 2) whether the membership has significantly increased or decreased since the new Board of Directors and slate of new Officers was elected on 2/12/20; 3) to ascertain the veracity of the Treasurer's stated liabilities of the Club as of August 12, 2020; 4) to verify that the monthly ongoing necessary expenses of the Club are still being paid timely; 5) to ascertain how many corporate dollars are being spent on legal fees; 6) to ascertain how many corporate dollars are being spent on accounting fees; 7) to ascertain the contingent liabilities of the Club; and 8) to determine whether or not the club is operating effectively.

Thank you for your anticipated cooperation with this Records Request.

Respectfully,



Carl L. Kennedy

cc: Wendy A. Hausmann, Esq.

From: clktax@aol.com,

To: pbfclub.treasurer@gmail.com,

Cc: edward@holodakpa.com,

Subject: PBFC - Request For Reimbursement, Miscellaneous Receipts, Other - Dated Material

Date: Sat, Aug 15, 2020 1:24 pm

Attachments: PBFC - Misc Receipts - Hard Copy Backup Available.pdf (20154K),
PBFC - Reimbursement Request - Fuel 08152020.pdf (2706K)

Andrew:

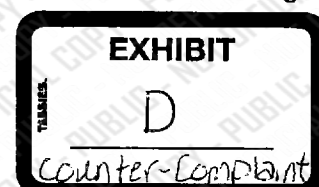
Please find attached receipts from multiple vendors regarding various items. These are receipts from myself and Alex Sanchez. These can be easily identified based upon debit card information you will find within the bank statements. I possessed a debit card (████) and so did Alex (████). These receipts were accumulated over time; limited time in 2018, all of 2019 and limited time in 2020. I have these attached receipts in hard copy, which I will bring with me to mediation unless you want to arrange to retrieve them from me sooner.

I provided Ara Yanikian with copies of PBFC's US Forms 990 for the tax years 2016, 2017 and 2018 on March 12, 2020 while Ara was still active in his short-lived capacity as the President of PBFC. Ara abandoned his position with PBFC within days of me providing him those items. I'll leave the fact checking to you.

Prior to mediation, I will be providing you with my personal, redacted American Express statements from when the first transaction my card was utilized by PBFC until when the last transaction my card was utilized by PBFC. Since you already have access to all bank account information you are privy to monies paid to American Express. You will have no difficulty verifying payments made for PBFC items.

As you are aware, my personal American Express was utilized by PBFC post February 12, 2020 with the last transaction taking place on February 18, 2020. In addition to my personal American Express card being utilized by PBFC, I have a handful of transactions from Shelt-Air, dba Pompano Beach Jet Center, for the first few days of February of 2020, those additional charges are attributed to an AmeriPrise credit card ending in █████, I will provide backup of the owed, yet-to-be-paid amounts for the American Express and the AmeriPrise charges and attach those hereto, also. The total amount is **\$2,512.52**. I am seeking immediate reimbursement for the amount on the attachment relating to this matter. Please send payment via Zelle to mail@goard.com.

Finally, do be aware, I provided financial statements and club evaluation reports at the BOD meetings in November of 2019, January of 2020 and February of 2020. The financial statements provided at the February 2020 BOD meeting included a Balance Sheet at December 31, 2019 and the related P&L Statement for the twelve months then ended. To prepare a final set of financial statements with properly adjusted entries to February 12, 2020 I will need access to the January 2020 and February 2020 bank statements. I cannot do a properly completed reconciliation or an accounting without those necessary documents. Please send these bank statements to me.



Respectfully,

Carl Kennedy