

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

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

CARL L. KENNEDY

Defendant

AFFIDAVIT OF STEVEN J. BORER

STEVEN J. BORER, who after first being duly sworn upon oath, deposes and states as follows:

1. I am the Affiant and have personal knowledge of the facts contained herein.
2. I am the Plaintiff in the matter of Borer v. Pompano Senior Squadron Flying Club (dba "Pompano Beach Flying Club"), Case # COWE20022099 in the County Court for the 17th Judicial Circuit in and for Broward County.
3. The Court's docket in my case does not reflect the accurate chronology of events in connection with documents submitted to the Court on January 12, 2021, because these documents were filed with the Clerk at the Courthouse after they had already been sent by e-mail to the Court's Judicial Assistant and lawyer Holodak.
4. The actual sequence of submissions to the Court on January 12, 2021 in my case, was as follows:
 - a. At approximately 7:31 am I e-mailed to the Judicial Assistant for The Honorable Judge Phoebee Francois, as well as Defendant's lawyer Holodak, the attached **①** "Memorandum to Court in Response to Defendant's Trial Memorandum". This document was filed with the Clerk at the Courthouse at approximately 9:05am.
 - b. Defendant's lawyer Holodak thereafter submitted the attached "Notice of Correcting Record" which was e-filed and received by me at approximately 12:33 pm. **②**

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c. At approximately 1:52 pm I e-mailed to the Judicial Assistant for The Honorable Judge Phoebe Francois as well as Defendant's lawyer Holodak the attached "Excerpt from Transcript from Hearing on January 11, 2021". This document was filed with Clerk at the Courthouse at approximately 2:05 pm.

d. Defendant's lawyer Holodak thereafter submitted "Defendant's Reply to Plaintiff's Post-Trial Motion and Memorandum" which was e-filed and received by me at approximately 2:42 pm.

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e. I received the attached letter of apology from Defendant's lawyer Holodak via the USPS on or about January 13, 2021.

FURTHER AFFIDANT SAYERTH NAUGHT.



STEVEN J. BORER

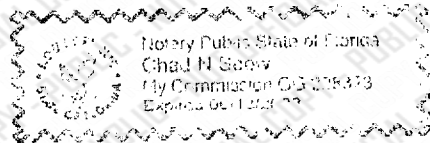
State of Florida)
County of Broward)

Sworn to and subscribed to before me by STEVEN J. BORER this 25 day of January, 2021 and who is known to me or satisfactorily proven and who did take an oath.



Notary Public

My commission expires: 6/13/2022



IN THE COUNTY COURT IN AND FOR BROWARD COUNTY FLORIDA

Steven J. Borer,
Plaintiff

vs.

Pompano Senior Squadron Flying Club,
D/B/A Pompano Beach Flying Club, Inc
Defendant.

Case No.: COWE 20 22099 (81)

MEMORANDUM TO COURT IN RESPONSE TO DEFENDANT'S TRIAL MEMORANDUM

Now comes Steven J. Borer, Plaintiff *Pro Se*, to respectfully ask the Court to review this Response to Defendant's Trial Memorandum, which was filed with only one business day before trial, before the Court issues its decision. This is my response.

1. Defense Counsel, Edward Holodak lied to this Court at trial yesterday.
2. I had filed a Motion to Produce certain documents at trial. Defendant agreed to produce these documents. These documents would show that the Club was in fact refunding Membership fees in 2018, 2019, and even 2020. They would also show that the Club did not change the Bylaws regarding the Membership fee until a special meeting in May, 2020.
3. Defendant's Attorney Holodak was asked *directly* by the Court why these financial documents were not brought to trial to corroborate Club President Mr. Greg Gilhooly's direct testimony. Attorney Holodak *testified* that the Defense had in fact subpoenaed the bank for these records in another matter, but they were not available. Mr. Holodak replied in the affirmative that he HAD subpoenaed these records in the case the Defendant is litigating against Carl L. Kennedy, but produced no evidence that he had in fact done so. An excerpt of the transcript is being ordered and will be filed as soon as it is received.
4. I ask the Court to take Judicial Notice of Broward County Case No. CACE 20005993. No subpoena is contained in this court docket and this is the ONLY pending litigation against the Club. The only way Defendant could properly subpoena bank records would have been pursuant to Florida Rule of Civil Procedure 1.351, which would have required they provide ten (10) days notice to Mr. Kennedy to object to such a subpoena. Such notice would have had to be served to Mr. Kennedy via the eportal and therefore docketed in this matter. The absence of such an entry in the Clerk's docket is proof that

Defendant's counsel lied to the Court at trial when Attorney Holodak stated he has subpoenaed bank records in another case.

5. Moreover, the Board of Directors and Officers of the Club would not need a subpoena to access bank records as they have access to any bank records online.
6. The Defendant was asked and agreed to produce at the trial meeting Minutes from 2018, 2019, and 2020. They did not bring these documents to trial. The Court asked for these documents to be provided by Wednesday, January 13th, 2021. The document provided by Defendant is the Minutes of the May 4, 2020 Special Meeting.
7. The Meeting Minutes of the Special Meeting in May, 2020 where current/future stock value was determined conspicuously do not contain any record of the Defendant's attempt to abandon its commitment as stated in the Operational Rules which were in effect up until the May meeting. The attached email dated May 8, 2020 to Attorney Edward Holodak from Attorney Wendy Hausmann regarding Defendant's Minutes of the May 4, 2020 Special Meeting reflects the falsity of Defendant's testimony at trial through its President.
8. No direct evidence of the Club's financial condition was entered into evidence except the testimony of the Club President. Defendant's Club President was not credible. He contradicted his own testimony and tried to backtrack several times. The Club's President testified under direct examination that the Club had in fact returned club membership fees during 2018, 2019, and 2020, but then stated there had been no refunds of the \$1700 membership fee. The President admitted that some refunds were made, even though he says they changed the Bylaws. He said the Club may have to file for bankruptcy but then admitted the Club was profitable. He had selective and convenient knowledge of prior Board actions, club finances, and prior meeting details.
9. A contract was formed between myself and Defendant on April 12, 2018 when the membership agreement was signed and a check was tendered to the Defendant. The check was received into evidence without objection.
10. I completed my part of the contract. Defendant breached their part of the contract. What the new Board of Directors changed or did in 2020 is irrelevant.
11. Defendant's Operational Rules in effect when the contract was formed are unambiguous and state the \$1700 membership fee is refundable to a member in good standing, less any amounts due in arrears to the club. The Defendant's Operational Rules were accepted as evidence without objection. The Club introduced no direct evidence the I was not in good standing when I left the Club.

12. The Membership agreement references and includes BOTH Bylaws and Operational Rules, but nowhere does it say Bylaws trump Operational Rules. The average person would not understand Bylaws or the concept that his \$1700 might not be returned. The average person would not see any conflict between "stock shares" and refundable membership fee.
13. Defendant argued that the Defendant's Bylaws are controlling, while I argue that the Bylaws and the Operational Rules are separate and can be read independently giving both meaning. Contract construction requires the Court to give meaning to both of the seemingly conflicting statements in a contract if possible.
14. The new Board of Directors can change the "refundable deposit" language in the Operational Rules prospectively but not retroactively, without my consent.

I thank the Court for its time and consideration in this matter.

I hereby certify that a true and correct copy of the foregoing has been served to Edward Holodak, Esq. via email at the email addresses he filed and hand delivered to the Clerk of Court this 12th day of January, 2021.

Respectfully,



Steven J. Borer
601 NW 73rd Avenue
Plantation, FL 33317
borersj@g.cofc.edu

IN THE COUNTY COURT IN AND FOR
BROWARD COUNTY, FLORIDA

STEVEN J. BORER,
MICHAEL W. BORER,

CASE NO.: COWE20022099 (81)

Plaintiff,

v

POMPANO BEACH FLYING CLUB,
GREGORY GILHOOLY,

Defendant.

NOTICE OF CORRECTING RECORD

Defendant, POMPANO SENIOR SQUADRON FLYING CLUB, INC., files this Notice of Correcting Record, as says:

During closing arguments at the trial held in this case on January 11, 2021, Defendant POMPANO BEACH FLYING CLUB, and its counsel made statements that the Club previously subpoenaed bank records relating to 2017, 2018, and 2020. The records had been requested by the Club of its financial institution, but a formal "subpoena" was never served. Counsel and Defendant apologize to the Court and Plaintiff for any confusion or inconvenience the inadvertent usage of the word "subpoena" may have caused. The intent of the statement was to convey to the Court that the records had been requested and were not in Defendant's possession at the time of trial. The statement was inadvertent and not meant to mislead the Court in any manner.

I **HERBY CERTIFY** that a true and correct copy of the foregoing has been sent via eportal this 12th day of January 2021 to pro se Plaintiff Steven J. Borer at borersj@g.cofc.edu and via U.S. Mail at 601 NW 73rd Avenue, Plantation, Florida 33317.

By: /s/ Edward F. Holodak, Esq.
EDWARD F. HOLODAK, ESQ.
Attorney for Defendant
Fla. Bar No.: 059234
Edward F. Holodak, P.A.
7951 SW 6th St., Suite 210
Plantation, Fl. 33324
pleadings@holodakpa.com

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IN THE COUNTY COURT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. COWE20022099 (81)

STEVEN J. BORER,
MICHAEL W. BORER,

Plaintiffs,

Vs.

POMPANO BEACH FLYING CLUB,
GREGORY GILHOOLY,

Defendants.

EXCERPT FROM NON-JURY TRIAL

BEFORE THE HONORABLE PHOEBEE FRANCOIS

VIA ZOOM

DATE: MONDAY, JANUARY 11, 2021

1 APPEARING ON BEHALF OF PLAINTIFFS:

2 STEVEN J. BORER, PRO SE
3 MIKE BORER, PRO SE
4 601 NW 73rd Avenue
5 Plantation, FL 33317
6 (803) 517-4244

7 APPEARING ON BEHALF OF DEFENDANT:

8 EDWARD F. HOLODAK, ESQ.
9 EDWARD F. HOLODAK, PA
10 7951 SW 6th Street, Suite 210
11 Plantation, FL 33324
12 (954) 927-3436
13 edward@holodakpa.com

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15 BE IT REMEMBERED, that the following excerpt
16 from the proceedings was taken in the above-styled cause
17 before Judge Phoebee Francois, via Zoom, on Monday, the
18 11th day of January, 2021, to wit:

19 - - -

20 * * * * *

21 THE COURT: Okay. What about the bank records
22 for 2018 and 2019?

23 MR. HOLODAK: Those are all part of the
24 litigation, Your Honor, that we are attempting
25 to -- before Judge Haines.

THE COURT: All right. Isn't that something
you can get from the bank?

MR. HOLODAK: We have subpoenaed them, Judge.
Again, the litigation is ongoing in front of Judge

1 Haines.

2 THE COURT: You've subpoenaed them from the
3 bank?

4 MR. HOLODAK: Yes, ma'am, we subpoenaed them
5 from Mr. Kennedy and from the bank.

6 THE COURT: And the bank has not responded?

7 MR. HOLODAK: Not as of yet, Your Honor.

8 THE COURT: And when did you subpoena them?

9 MR. HOLODAK: Judge, off the top of my head, I
10 don't know.

11 THE COURT: Okay. I would be interested in
12 knowing, Counsel. And I think that it would be
13 verbatim on both ends. The testimony from
14 Mr. Gilhooly was that some members received their
15 refunds in 2018 and some members did not. I want
16 to know what the criteria was, why were select
17 members given their refunds and select members not
18 given their refunds. That's important for me to
19 know and it's going to make a very big difference
20 in what my ruling is going to be.

21 MR. HOLODAK: Understood.

22 THE COURT: So I want you guys to provide that
23 information.

24 * * * * *

25 (The hearing was concluded.)

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CERTIFICATE OF REPORTER

THE STATE OF FLORIDA,)
COUNTY OF PALM BEACH.)

I, BETH L. KELLY, Florida Professional Reporter, certify that I was authorized to and did stenographically report the foregoing excerpt from the proceedings and that such transcription, Pages 1 through 3, herein is a true and accurate record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested, directly or indirectly, in this action.

The certification does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the reporter.

Dated this 12th day of January, 2021.



Beth L. Kelly, FPR

LAW OFFICES OF EDWARD F. HOLODAK, P.A.



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Washington, D.C.

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January 12, 2021

Honorable Judge Phoebe Francois
Broward County Courthouse
100 N Pine Island Rd Ste 210
Plantation, FL 33324-7804

RE: Correction of Record

Dear Judge Francois:

Please find enclosed a courtesy copy of a Notice of Correcting Record that I filed on behalf of my client today in this case. The Notice is self-explanatory, but I wanted to be sure you received a direct copy of this Notice, along with my apologies for my inadvertent use of the word subpoena.

Thank you for your immediate attention to this matter.

Respectfully submitted,

Edward F. Holodak

Edward F. Holodak
Attorney at Law

EFH/ab

Cc: Pompano Beach Flying Club, Defendant
Steven J. Borer, Plaintiff

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