

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

POMPANO SENIOR SQUADRON
FLYING CLUB, INC., a Florida
corporation,

CASE NO: CACE 20-005993 (o8)

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

**PLAINTIFF'S MOTION TO APPOINT SPECIAL MAGISTRATE FOR
DISCOVERY AND REQUESTS FOR CONTINUANCES AND DELAYS**

Plaintiff, Pompano Senior Squadron Flying Club, Inc. (Plaintiff "Club"), by and through their undersigned counsel, files this Motion to Appoint Special Master for Discovery and Continuances as to Defendant, Carl L. Kennedy, II (Defendant "Kennedy") and says:

1. Plaintiff Club pursuant to Rule 1.490, Fla.R.Civ.P., Moves this Court for the appointment of a special magistrate in this matter with for issues regarding discovery disputes, motions for continuance, and motions for extensions of time.
2. As this Court is fully aware, this Court advised the parties that motions filed by the parties herein are to be set on special set hearings and not uniform motion calendar.
3. Plaintiff Club sued Defendant Kennedy for an accounting and preliminary discovery has unturned over \$340,000 of unaccounted for monies and expenditures by Defendant Kennedy during the time he was in charge of Plaintiff Club's finances, which has resulted in liens against Plaintiff Club's property and a lawsuit filed by an alleged creditor regarding a \$100,000 for which no documents

exist, but the plaintiff therein alleges was requested, approved and accepted by Defendant Kennedy.

4. Plaintiff Club has attempted to continue to conduct discovery and move this case along expeditiously only to be met by dilatory tactics from Defendant Kennedy.
5. Since the inception of this case, Defendant Kennedy has filed five (5) separate Notices of Unavailability for a total of 95 days. Pursuant to the attached email from Defendant Kennedy to Plaintiff Club, Defendant Kennedy envisions that a Notice of Unavailability even prevents Plaintiff Club from communicating with Defendant Kennedy over even the most mundane items. See Email attached as Plaintiff's Exhibit Number 1.
6. In addition to those 95 days, Defendant Kennedy has sought and received continuances as to discovery responses totaling an additional 99 days. Thus, defendant Kennedy has delayed the proceedings herein for a total of 194 days more than one-half year of inactivity and delay.
7. In the interim, Plaintiff Club has been stymied from obtaining the necessary relief it has sought in this matter, from moving this case expeditiously, and given the totality of the circumstances a lack of due process.
8. While Plaintiff Club has attempted to extend courtesies to Defendant Kennedy as to his various reasons for continuances and delays, as the 4th District Court Of Appeal has stated, a Notice of Unavailability, is actually not a pleading recognized by statute or the Florida Rules Of Civil Procedure. See *Dileo v. Landman*, 987 S.2d 933 (Fla. 4th DCA 2008) (observing that a Notice of Unavailability is not provided for in any statute or under the Florida Rules of Civil Procedure and does not curtail a court's ability to control its docket).

9. In order to move this case more expeditiously, allow Plaintiff Club to be able to effectively conduct its discovery so as to determine the true amount of misappropriated funds and recover same, requests the appointment of a special master which will also add this Court with its judicial economy.

WHEREFORE, Plaintiff Club moves this Court for an Order granting the appointment of a special magistrate, an award of court costs and attorney fees, and any other relief this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 24th day of March 2021, to Carl L. Kennedy, II, clktax@aol.com

/s/ Edward F. Holodak
Edward F. Holodak, Esq.
Attorney for Plaintiffs
Fla. Bar No. 059234
EDWARD F. HOLODAK, P.A.
7951 SW 6th Street, Suite 210
Plantation, Florida 33324
Telephone: (954) 927-3436
pleadings@holodakpa.com

Exhibit 1

From: [Edward Holodak](#)
To: [Carl Kennedy](#)
Cc: [Tatiana Wilson](#)
Subject: RE: PBFC v Kennedy - UNAVAILABILITY
Date: Wednesday, March 24, 2021 9:16:00 AM
Attachments: [image003.png](#)
[DeIio v Landman.pdf](#)
[image004.png](#)

Carl

While I respect your family issues, I was not asking you to attend a deposition or for anything other than dates in the next 45 days you can attend a deposition. A notice of unavailability does not mean I cannot communicate with you. I entered an agreed order giving you extra time to respond to discovery based upon same; however, the attached case from the 4th DCA says the pleading does not even exist under the Rules.

Please provide me dates as requested, or I will proceed accordingly.

Very truly yours,

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

Edward F. Holodak, P.A.
7580 NW 5th Street
Suite 15125
Plantation, Florida 33317
(954) 927-3436



This e-mail is intended for the addressee shown. It contains information that is confidential and protected from disclosure. Any review, dissemination or use of this transmission or its contents by persons or unauthorized employees of the intended organizations is strictly prohibited.

NOTICE TO HOMEOWNER ASSOCIATION AND CONDOMINIUM ASSOCIATION CLIENTS: THIS

COMMUNICATION (AND ANY ATTACHMENTS) MAY INCLUDE PRIVILEGED COMMUNICATION BETWEEN ATTORNEY AND CLIENT THAT ARE EXEMPT FROM DISCLOSURE AND PROTECTED PURSUANT TO SECTIONS 90.502, 718.111(12) AND 720.303(4), FL. STAT. IN SUCH EVENT AND TO PROTECT THE PRIVILEGED NATURE OF THIS COMMUNICATION, THIS COMMUNICATION SHOULD NOT BE PLACED IN, OR CONSIDERED TO BE PART OF, THE OFFICIAL RECORDS OF AN ASSOCIATION PURSUANT TO SECTIONS.

THIS FIRM ALSO ACTS AS A DEBT COLLECTOR AND ANY INFORMATION OBTAINED THROUGH E-MAILS MAYBE BE USED FOR THAT PURPOSE.

The information in this e-mail is attorney privileged and confidential. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver this transmittal to the intended recipient, you are notified that any distribution or copying of this communication is strictly prohibited. If you received this e-mail in error, please notify the sender immediately at the number below.

We are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments to this e-mail, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.



From: Carl Kennedy <clktax@aol.com>
Sent: Tuesday, March 23, 2021 11:31 PM
To: Edward Holodak <edward@holodakpa.com>
Cc: Tatiana Wilson <Tatiana@HOLODAKPA.COM>
Subject: PBFC v Kennedy - UNAVAILABILITY

Mr. Holodak,

I advised you I am dealing with a serious family medical emergency at this time, please allow me to attend to it without needing to deal with non-emergency litigation purposes.

Therefore, to ensure I may deal with this private family matter as necessary without needing to respond to your emails or other litigation matters, I have filed a Notice of Unavailability for this period of time. Any communications from you following this email will be placed in a special "folder" until the family medical emergency with which I am dealing has been resolved and I am prepared to attend to my personal issues, including this lawsuit. Your anticipated understanding will be appreciated.

Respectfully,

Carl Kennedy