

IN THE CIRCUIT COURT OF THE SEVENTEENTH 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)

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW, Defendant, CARL L. KENNEDY, II ("Kennedy") by and through the undersigned counsel, and moves this Court for an Order dismissing Plaintiff's, POMPANO SENIOR SQUADRON FLYING CLUB, INC. ("Flying Club"), Complaint, and as grounds thereof states as follows:

1. On April 7, 2020 Plaintiff, Flying Club filed this action against Defendant. Plaintiff's complaint alleged two (2) causes of action, specifically requesting an accounting and an injunction. A copy of Plaintiff's complaint is attached hereto as **Exhibit "A"**.
2. Between 2014 and 2020 Defendant, Kennedy served as the treasurer of Plaintiff, Flying Club.
3. In its complaint Plaintiff sought an "accounting" and an injunction requiring Defendant "to return all corporate records in his possession or control to Plaintiff".
4. Plaintiff did not specify what type of accounting it seeks from Defendant.
5. On June 10, 2021, Defendant, Kennedy delivered to Plaintiff, Flying Club a full accounting in accordance with generally accepted accounting principles. Specifically, Defendant provided Plaintiff with a general ledger detail report, consisting of a profit and loss statements and

balance sheets from April 2014 to December 31, 2016. Additionally, Defendant, previously delivered to Plaintiff, the same accounting for the time period of 2017 through the end of his term as treasurer on February 12, 2020. **A copy of the e-mail dated June 28, 2021 wherein Plaintiff's counsel acknowledges receipt of the above documents is attached hereto as Exhibit "B".**

6. Defendant has, throughout this matter, attempted to deliver to Plaintiff the multiple large boxes which contain all of the Plaintiff's documents and records in his possession, custody or control. See Paragraph 8, Motion for Sanctions filed on August 29, 2020 Due to Plaintiff's Failure and Refusal to Participate in Mediation at **Exhibit "C"**. Plaintiff has refused to cooperate with the attempted delivery of the documents. However, Defendant has, as of the filing of this Motion to Dismiss, ensured the personal delivery of all of these boxes to counsel for Plaintiff. See "receipt" for the delivery of these boxes dated June 10, 2021 at **Exhibit "D"**.

7. Defendant is no longer in possession of any documents or records which belong to and have been provided to Plaintiff, except for copies he has made of such documents and records for litigation purposes. See Affidavit of Defendant dated June 30, 2021 at **Exhibit "E"**.

8. Since, Defendant has complied with Plaintiff's to "return all corporate records in his possession or control to Plaintiff, Flying Club" no further relief can be granted by the Court. As such the Court must dismiss Plaintiff's complaint since no further relief can be granted. *See Johnson v. Gulf County*, 965 So.2d 298 (Fla. 1st DCA 2007). Here, Defendant has complied and provided all documentation and records in his possession, custody or control, therefore Plaintiff is unable to state a claim upon which injunctive relief can be granted.

9. Similarly, Plaintiff's accounting claim should be dismissed since Plaintiff, requested only an "accounting" and failed to request any specific type of relief. Since Defendant

already provided Plaintiff, with the aforementioned documentation no further relief can be granted and Plaintiff's claim should be dismissed.

WHEREFORE, Defendant, CARL L. KENNEDY, II respectfully requests that this Honorable Court enter an order dismissing Plaintiff's Complaint, together with any other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of July 2021 a copy of the foregoing was e-filed and delivered to Edward F. Holodak, Esq., 7951 SW 6th St., Suite 210, Plantation, FL 33324, pleadings@holodakpa.com.

THE LAW OFFICES OF SCOTT J. KALISH, PLLC.

/s/ Scott J. Kalish

SCOTT J. KALISH, ESQUIRE

Florida Bar No.: 118292

scott@scottjkalishlaw.com

DARA A. JAGGARS, ESQUIRE

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(954)-990-9307

Attorney for Defendant

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 (08)*

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

COMPLAINT

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC.. a Florida corporation (Plaintiff "Flying Club"), by and through its undersigned counsel, sues Defendant, CARL KENNEDY individually (Defendant "Kennedy") and says:

GENERAL ALLEGATIONS

1. Plaintiff Flying Club is a Florida corporation doing business in Broward County, Florida, and is otherwise *sui juris*.
2. Defendant Kennedy is over the age of 18, is a resident of Broward County, Florida is a prior director of Plaintiff Flying Club and is otherwise *sui juris*.
3. Defendant Kennedy was an officer and director of Plaintiff Flying Club from May 22, 2014, until the beginning of 2020.
4. At all times relevant to the issues herein, Defendant Kennedy served as the treasurer of Plaintiff Flying Club.
5. During his term as treasurer, Defendant Kennedy made multiple payments from Plaintiff Flying Club's corporate bank account to pay Defendant

Kennedy's American Express credit charges.

6. Just prior to the date Defendant Kennedy was replaced as treasurer of Plaintiff Flying Club, Defendant Kennedy issued checks on Plaintiff Flying Club's corporate checking account to Defendant Kennedy, Wendy Hausmann, Esq., and others.

7. There are no corporate records, resolutions, minutes of meetings, or any other corporate document evidencing authorization for these payments made by Defendant Kennedy to himself, Attorney Hausmann and others.

8. On or about March 19, 2020, Plaintiff Flying Club made demand upon Defendant Kennedy for Defendant Kennedy to produce, to the corporation, all corporate records and documentation belonging to the corporation. Copy of demand letter is attached hereto as Plaintiff Flying Club's Exhibit #1. (the "Record Demand").

9. Despite the Record Demand, Defendant Kennedy has failed or refused to turn over the corporate records to Plaintiff Flying Club.

10. Plaintiff Flying Club retained the services of Edward F. Holodak, P.A., and agreed to pay it a reasonable fee for services rendered herein.

11. All conditions precedent to bringing this action have been satisfied or waived.

COUNT I **ACCOUNTING**

12. Plaintiff Flying Club realleges the General Allegations and incorporates them herein by reference as if pled herein specifically.

13. This Court has jurisdiction over the parties and the subject matter herein.

14. As a prior director and officer of Plaintiff Flying Club, Defendant Kennedy, especially as treasurer, was in a fiduciary relationship to Plaintiff Flying Club.

15. Due to the scarcity of records left behind by Defendant Kennedy and the remaining members of the Board of Directors of Plaintiff Flying Club, Plaintiff Flying Club cannot accurately reconstruct its financial status and records.

16. Defendant Kennedy authorized various payments as treasurer of Plaintiff Flying Club, which such payments Plaintiff Flying Club cannot reasonably ascertain as to whether they were valid expenses of Plaintiff Flying Club or Defendant Kennedy's own personal expenses.

17. Plaintiff Flying Club has no adequate remedy at law.

18. Defendant Kennedy breached his duty to Plaintiff Flying Club by:

- a. failing to keep proper records;
- b. failing to deliver the Plaintiff Flying Club's financial records to it at the end of his term as treasurer;
- c. appropriating funds for non-properly authorized expenses;
- d. using Plaintiff Flying Club's money to make payments on Defendant Kennedy's personal American Express card.

WHEREFORE, Plaintiff Flying Club demands an accounting from Defendant Kennedy, an award of court costs and attorney fees, and any other relief that this Court deems just and equitable.

COUNT II
INJUNCTION

19. Plaintiff Flying Club realleges the General Allegations and incorporates them herein by reference as if pled herein specifically.
20. This Court has jurisdiction over the parties and the subject matter herein.
21. Defendant Kennedy, as the prior treasurer and director of Plaintiff Flying Club, had control of certain financial records and documents which belong to Plaintiff Flying Club.
22. Despite the Record Demand, Defendant Kennedy has failed or refused to turn over Plaintiff Flying Club's corporate records.
23. Upon the expiration of his term as treasurer and director of Plaintiff Flying Club, Defendant Kennedy has no legal right to retain the corporate records of Plaintiff Flying Club.
24. Plaintiff Flying Club requires its corporate records in order to legally and effectively continue its operations.
25. Without having its complete and accurate corporate records, Plaintiff Flying Club is suffering irreparable harm in that it cannot adequately operate, account for past transactions, and know the actions of the prior Board of Directors of Plaintiff Flying Club.
26. Plaintiff Flying Club has no adequate remedy at law.
27. It is the public policy of the State of Florida to enforce its statutes, including the Florida Corporation Act.
28. Chapter 607.1601 et. seq., requires a corporation to maintain certain corporate records, to make such corporate records available for inspection by a

shareholder and director.

29. Accordingly, Plaintiff Flying Club is required by Florida law to maintain such records that are now in the possession and control of Defendant Kennedy but which ultimately belong to Plaintiff Flying Club.

WHEREFORE, Plaintiff Flying Club moves this Honorable Court for an injunction requiring Defendant Kennedy to return all corporate records in his possession or control to Plaintiff Flying Club, an award of its court costs and attorney fees, and any other relief that this Court deems just and equitable.

/s/ Edward F. Holodak
EDWARD F. HOLODAK, ESQ.
Attorney for Plaintiff
Florida Bar # 059234
EDWARD F. HOLODAK, P.A.
7951 SW 6th Street, Suite 210
Plantation, FL 33324
Telephone: (954) 927-3436
pleadings@holodakpa.com

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



EDWARD F. HOLODAK, Esq.
Admitted in Florida and
Washington, D.C.

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Of Counsel
Admitted in Florida and
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3326 NE 33rd Street
Ft. Lauderdale, FL 33308
954-566-5070

This Firm Acts as a Debt Collector
Edward@holodakpa.com
www.browardbusinesslawyers.com

March 19, 2020

Via Certified Mail Return Receipt Requested 7018 0040 0000 2050 3342
and Regular U.S. Mail

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

Re: Pompano Senior Squadron Flying Club, Inc.

Dear Mr. Kennedy:

The new Board of Directors of Pompano Senior Squadron Flying Club, Inc. d/b/a Pompano Beach Flying Club retained this law firm as the Corporation's counsel. As you know, you are no longer a member of the Board of Directors of the Corporation, nor are you any longer the treasurer. Accordingly, the new Board of Directors demands that within five (5) days of receipt of this letter, you immediately transfer all documentation belonging to the Corporation to me. This includes all check books, financial statements, accounting records, financial records, bank statements, insurance policies, membership lists, stock certificates, correspondences to and from the Corporation to any third party, minutes of all Board of Directors meetings, minutes of all shareholders meetings, any and all shareholder agreements, the Corporation by-laws, the Articles of Incorporation, and all books and records of the Corporation. As a former Board member, you no longer have any legal right to retain the above documents. Accordingly, if you fail to comply with this demand, the Board has authorized me to take all legal actions necessary against you to obtain these documents.

Thank you for your anticipated cooperation with the above demand.
I remain,

Very truly yours,

Edward F. Holodak

Edward F. Holodak
Attorney at Law

EFH/tp

Exhibit # 1

From: hausmannw@aol.com,

To: edward@holodakpa.com,

Cc: clktax@aol.com,

Subject: PBFC v Kennedy - PBFC Accountings for 4/1/14 - 2/12/2020

Date: Fri, Jun 25, 2021 4:57 pm

Attachments: PBFC - GL Detail 04012014 to 12312016.pdf (1355K)

Exhibit B

Good afternoon, Ed:

Please see below and attached, full accountings for Pompano Senior Squadron Flying Club (PBFC) from the beginning of Carl Kennedy's term as Treasurer in April, 2014 through December 31, 2016. The accountings consist of General Ledger Detail Reports which include Profit & Loss Statements and Balance Sheets. You have previously been provided a "flash drive" containing the similar PBFC accountings for the years 2017 through the conclusion of his term as Treasurer on February 12, 2020.

Thank you,
Wendy A. Hausmann

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

From: Carl Kennedy <clktax@aol.com>

To: pbfcclub.treasurer@gmail.com; pbfcclub.vp@gmail.com

Cc: hausmannw@aol.com

Sent: Fri, Jun 25, 2021 4:36 pm

Subject: PBFC - General Ledger Detail Report - partial 2014, full 2015, full 2016

Tor:

Attached hereto you will find the final three quarters of 2014, the full year 2015 and the full year 2016 in the form of a General Ledger Detail report.

This will culminate the final accounting for my term as PBFC Treasurer. As of this submission to PBFC, the Club has not only been provided with accountings for every single month I was Treasurer of PBFC, but also has been provided with every piece of paper from which the accountings have been comprised. PBFC is therefore able to do on its own whatever other type of accounting for whatever purpose it desires.

With Due Respect,

Carl Kennedy

From: edward@holodakpa.com,

To: hausmannw@aol.com,

Cc: ciktax@aol.com,

Subject: RE: PBFC v Kennedy - PBFC Accountings for 4/1/14 - 2/12/2020

Date: Mon, Jun 28, 2021 10:54 am

Attachments:

Wendy

I acknowledge receipt of the documentation but do not agree with your assertion regarding a full accounting.
Thank you

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

From: hausmannw@aol.com,

To: edward@holodakpa.com,

Cc: ciktax@aol.com,

Subject: PBFC v Kennedy - Delivery of corporate records

Date: Tue, Jun 8, 2021 11:38 am

Ed:

This will confirm that I will meet Tatiana at noon at your office on Thursday to deliver multiple boxes containing PBFC corporate records which are now in my possession.

Please ask Tatiana to provide me with her cell # so I can call if I get lost or am running behind.

Thank you,
Wendy A. Hausmann

NOTICE: This e-mail message and any attachment to this e-mail message contains confidential information that may be legally privileged. If you are not the intended recipient, you must not review, retransmit, convert to hard copy, copy, use or disseminate this e-mail or any attachments to it. If you have received this e-mail in error, please notify us immediately by return e-mail or by telephone at 561.477.5353 and delete this message. Please note that if this e-mail message contains a forwarded message or is a reply to a prior message, some or all of the contents of this message or any attachments may not have been produced by THE LAW OFFICES OF WENDY A. HAUSMANN, 20283 STATE ROAD 7, SUITE 400, BOCA RATON, FL 33498, E-MAIL: hausmannw@aol.com.

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, II

Defendant.

**MOTION FOR SANCTIONS, ATTORNEY'S FEES AND COSTS
DUE TO PLAINTIFF'S FAILURE AND REFUSAL
TO PARTICIPATE IN MEDIATION**

TO THE HONORABLE JUDGE OF THIS COURT:

I, Carl Kennedy, II, hereby respectfully represent as follows:

1. The parties were required to participate in mediation by this Court's two (2) Orders dated July 14, 2020 and July 31, 2020, which Orders are incorporated by reference.
2. Mediation was scheduled and properly noticed by mediator Michael S. Bloom, Esquire, to take place on August 27, 2020.
3. Prior to mediation, on August 17, 2020, Plaintiff corporation announced their intended refusal to participate in mediation if my attorney, Wendy Hausmann, was going to participate in any way. See email correspondence from Plaintiff's counsel to Mr. Bloom dated August 17, 2020 at Exhibit A.
4. Plaintiff had no legal or other authority to rely on to form a basis to issue such an ultimatum to the mediator (or myself), or to place conditions on this Court's Orders to participate in mediation. If they objected to Ms. Hausmann's appearance at mediation, they should have filed a Motion beforehand requesting this specific relief, as they had ample time to do following the Court's Order dated July 14, 2020.
5. On August 27, 2020, Plaintiff appeared for mediation with all five (5) members of the corporation's Board of Directors to participate in mediation. In essence, Plaintiff appeared at mediation armed with a firing squad, expecting me to appear without an attorney, and intending to intimidate me and steamroll over me. Plaintiff corporation is comprised of bullies – they are

members of a gang, cloaked by the designation of a corporation. And they have already stated unequivocally that they “don’t want to play nice in the sandbox”. The imaginable (or, unimaginable) scenario of the mediation, had Ms. Hausmann not been present, is the anticipated horror of my saying “The sky is cerulean blue”, and having Plaintiff jump at me, one at a time, arguing that the sky is royal blue, another arguing the sky is periwinkle blue, another arguing the sky is turquoise, and so on. It is unreasonable to expect me to “go it alone” against a malevolent team of antagonistic players who possess an unmasked antipathy towards me and an unwillingness “to play nice in the sandbox.”

6. On August 27, 2020, Plaintiff in fact refused to mediate because Ms. Hausmann was present with me. See Mediation Report at Exhibit B.

7. Simply because Plaintiff has alleged that Ms. Hausmann has a “conflict of interest” doesn’t give them the authority to place conditions on their compliance with the Court’s Orders to participate in mediation or to restrict my choice of attorney for representation at a mediation. The ludicrous extension of Plaintiff’s position is that a party may exclude another party’s attorney from mediation based solely on unverified allegation(s) of whatever they deem sufficient, including conflict of interest or another alleged ethical violation(s).

8. Plaintiff is not interested in corporate business. Plaintiff is only interested in a personal vendetta against me, and they have now expanded their obsession to Ms. Hausmann because she represents me. I brought six (6) full boxes to mediation to show the volume of the documents and records I have either scanned and sent to them already, or have offered to provide them immediately if they are willing to pay the labor and costs involved in sending such boxes to Plaintiff. (However, under the facts and circumstances of this matter, I have been forced to raise the issue of inventory of the boxes, because I reasonably do not trust Plaintiff not to accuse me of failing to provide this, that, or the other document/record.) Plaintiff did not even inquire as to what the boxes contain.

9. The gravamen of imposing the highly unusual and severe penalty of disqualifying, excluding or preventing a party from being represented by the attorney of their choice requires evaluating such a decision using the highest and strictest of scrutiny and standards. Moreover, if Plaintiff corporation wants to exclude my attorney of choice, Plaintiff corporation should be compelled to pay my reasonable attorney’s fees for alternate representation.

10. Plaintiff should be limited at any future mediation to representation by their counsel and only one (1) individual representing Plaintiff corporation.

11. Ms. Hausmann agreed to represent me at mediation, and I paid her a fee of \$100.00 for this event. See Exhibit C. I am also required to pay for the mediator's time on August 27, 2020, and will submit his invoice upon receipt. I should be reimbursed by Plaintiff in the full amount of the reasonable attorney's fees and mediator fees I have incurred due to their failure and refusal to comply with this Court's Orders to participate in mediation.

WHEREFORE, I respectfully request: 1) that Plaintiff be required to pay my reasonable attorney's fees and mediator costs in this matter; 2) that Plaintiff be limited at any future mediation to representation by their counsel and only one (1) individual representing Plaintiff corporation; and 3) any other relief consistent with this Motion that the Court deems just and proper under the facts and circumstances of this matter.

I hereby certify that I sent a copy of this Motion via the e-portal to Edward Holodak, Esquire at pleadings@holodakpa.com, on the 29th day of August, 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: clktx@aol.com

Boxes Delivered to Ed Holodak
on 6/10/21

- ① Deposit slips
- ② Tach Time Tx '19 + '20
- ③ File Folders
- ④ Membership Initial Apps
MISC. File Items - OLD
- ⑤ Receipts/ vendors
Summary Aug '20
- ⑥ 2017 Deposits + Time Booklet

Wendy A. Hallman
Jaher

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

CARL L. KENNEDY, II

Defendant/Counter-Plaintiff.

Case No.: CACE 20-005993

Division (8)

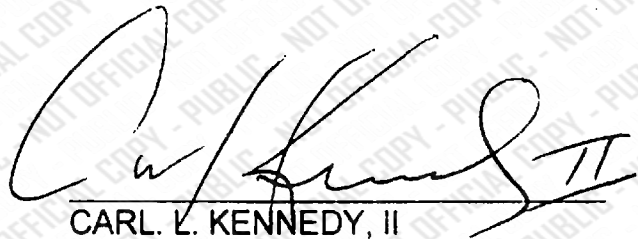
AFFIDAVIT OF CARL L. KENNEDY, II

Carl L. Kennedy, II, 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 Defendant in this matter and the former Treasurer of Plaintiff corporation.
3. To the best of my knowledge, information and belief, I have provided directly to Plaintiff all documents and records within my possession, custody or control which belong to the Plaintiff.
4. To the best of my knowledge, information and belief, I have provided Plaintiff all financial documents and records within my possession, custody or control which relate to Plaintiff corporation.
5. I have provided Plaintiff with an accounting in the form of a General Ledger Detail (which includes Profit & Loss Statement and Balance Sheet) for every month of the entire term that I was Treasurer of Plaintiff corporation from April, 2014 through February 12, 2020.

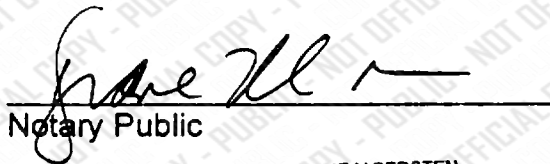
6. I possess no information in the form of electronic data regarding the financial records of the Plaintiff which has not already been provided to Plaintiff in the form of paper documents and records.

FURTHER AFFIANT SAYETH NAUGHT


CARL L. KENNEDY, II

State of Florida)
County of ~~Palm Beach~~)
 Broward

Sworn to and subscribed to before me by CARL L. KENNEDY, II this 30 day of June, 2021 and who is known to me or satisfactorily proven and who did take an oath.


Notary Public

My commission expires: Feb 08, 2022



DIANE M PERSTEN
Commission # GG 159200
Expires February 8, 2022
Bonded Thru Budget Notary Services

I hereby certify that I sent a copy of the foregoing via the e-portal to Edward Holodak, Esquire at pleadings@holodakpa.com, on the _____ day of _____, 2021.

Respectfully submitted,

/s/ Wendy A. Hausmann
Wendy A. Hausmann, Esquire
Attorney for Defendant
20283 State Road 7, Suite #400
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