

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.

**PLAINTIFF'S MOTION TO COMPEL BETTER
RESPONSES TO SECOND REQUEST TO PRODUCE and SANCTION**

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. (Plaintiff "Club"), by and through its undersigned counsel, files this Motion to Compel Better Responses to Second Request to Produce and Sanction Defendant Carl L. Kennedy, II (Defendant "Kennedy") and says:

1. On or about February 11, 2021, Plaintiff Club propounded a Second Request to Produce to Defendant Kennedy relative to the issues in the pleadings before this Court. Defendant Kennedy replied objecting to Request #1 claiming Accountant/Client privilege.

2. Plaintiff Club sued Defendant Kennedy for an accounting, alleging that at the time he was treasurer of the Club, he misspent Club money and provided no accounting and financial documents to the Club.

3. The request called for electronic copies of the accounting software, paid for and belonging to Plaintiff Club, of Plaintiff Club's accounting data.

4. As Plaintiff Club is the client and such privilege belongs to Plaintiff Club; it cannot be privileged to give a client the client's own accounting information. Not only is this information relevant and material to the issues herein; Plaintiff Club is facing tens

of thousands of dollars of penalties, fines and interest imposed the by IRS against it for not filing taxes in 2019 and 2020 (the years Defendant Kennedy was the Club's treasurer and the years Plaintiff Club PAID Defendant Kennedy and his company to due its taxes).

5. To claim that a client cannot have its own data because of privilege is absurd, dilatory and should be sanctioned.

6. If Defendant Kennedy is attempting to claim that the request includes data from his other clients, that too is absurd, dilatory and should be sanction. The request only requests Plaintiff Club's data, and based upon the affidavit of the Matthew J. Kahn, CPA attached hereto, data stored within QUICKBOOKS (the electronic software in question) is segregated by client and it easily can produce and replicate the data for one client at a time.

7. If Defendant Kennedy claims that he has produced paper copies of such data, Plaintiff Club is entitled to its own accounting software and data, Plaintiff Club should not have to rely upon the representations of Defendant Kennedy that he has produced all such correct data, especially as Plaintiff Club is now amending its Complaint to sue Defendant Kennedy for breach of fiduciary duty related to his service as the Club's treasurer and director and furthermore, Plaintiff Club requires the electronic data to more easily and less costly verify the accounting owed to it by Defendant Kennedy (a cause of action sued upon) and to more cost efficiently prepare its taxes to avoid further sanctions by the IRS.

8. Defendant Kennedy has done all he can to avoid providing Plaintiff Club with Plaintiff Club's own electronic data, an asset owned by Plaintiff Club, there is no valid reason Defendant Kennedy should not be compelled to Immediately hand over this information in electronic form and should not be sanctioned for filing a frivolous

objection to the request.

WHEREFORE, Plaintiff Club moves this Court for the above Order requested in the Motion, an award of court costs and attorney fees, and any further relief that this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 13th day of September 2021, to Scott Kalish, Esq., The Law Offices of Scott J. Kalish, 5255 N. Federal Highway, Suite 325, Boca Raton, FL 33487, scott@scottjkalishlaw.com.

/s/Edward F. Holodak
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_____ /

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF BROWARD)

On this day personally appeared before me, the undersigned authority, Matthew J. Kahn, CPA., who being by me first duly sworn upon his oath according to the law deposes and says:

1. I attest to the following based upon my personal knowledge.
2. Affiant is a practicing certified public account in Broward County, Florida, having been licensed by the State of Florida since September 1, 1995.
3. Throughout my 26 years as a CPA I have personally utilized QUICKBOOKS as an accounting electronic software and I am personally familiar with its operation and data storage functions and capabilities.
4. I process my clients' data and financial functions, including preparation of their tax returns, using QUICKBOOKS.
5. Each client's data is stored and retrieved separately. The software does not comingle that financial or accounting data of one client with that of another client. It is quick and easy and a built in function of the electronic software package of QUICKBOOKS to retrieve, copy and transmit one client's entire data file to the client or any other person desired.
6. Producing such data for one client has no impact or bearing on the data of another client and producing just one client's data will not produce any data

- belonging to another client stored within QUICKBOOKS.
7. The Plaintiff herein requires the electronic information stored within its QUICKBOOK's data file to accurately determine the veracity of the information provided thus far by Defendant Kennedy, to obtain information stored therein to determine the true nature of the expenditures made by Defendant Kennedy while he was the treasurer of the Club, for either the benefit of Plaintiff Club or for his own benefit.
 8. The information in the datafile requested by Plaintiff Club is more detailed and accurate than any paper documents Defendant Kennedy has produce thus far.
 9. Additionally, Plaintiff Club is facing fines and interest charges from the Internal Revenue Service (IRS) for not filing tax returns during 2019 and 2020, while Defendant Kennedy was the Club's treasurer and supposedly its tax return preparer. The information electronically stored within the Quickbooks datafile is essential to be able to adequately and correct file such tax returns.
 10. The time and effort to be able to verify the information related the issues raised by Plaintiff Club in this lawsuit, as compared to trying to obtain and verify such from paper documents in exponentially faster and cheaper. As the data stored within Quickbooks is the client's data, I find no reason as a CPA that any accountant, bookkeeper or financial planner would not deliver such data and electronic datafile to the client.

FURTHER AFFIANT SAYETH NAUGHT.



MATTHEW J. KAHN, CPA.

The foregoing instrument was acknowledged before me, by means of [] **physical presence** or [] **online notarization**, this 13th day of September, 2021, by MATTHEW J. KAHN, CPA who is personally known to me or who produced _____ as identification and who did take an oath.



NOTARY PUBLIC

My Commission Expires:

