

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 SANCTION

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. (Plaintiff "Club"), by and through its undersigned counsel, files this Motion to 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. Copy of Motion to Compel attached hereto as Exhibit #1.

4. On or about September 29, 2021 the Honorable Thomas M. Lynch, IV, acting as Special Magistrate herein, Ordered Defendant Kennedy to produce the electronic QuickBooks datafile requested by Plaintiff Club. Copy of the Order attached

hereto as Exhibit #2.

5. On or about October 16, 2021 Defendant Kennedy produced, not the required QuickBooks datafile in electronic form as Ordered, but instead delivered PDF copies of data in an intentional and contemptuous violation of the Order.

6. Plaintiff Club in its Request to Produce, its Motion to Compel and its arguments to the Special Magistrate was extremely clear that the QuickBooks datafile in electronic form was what was requested and needed, the Order granting the Motion to Compel is clear and yet, Defendant Kennedy, in an attempt to once again block Plaintiff Club from doing its own forensic analysis of Defendant Kennedy's handling of the Club's finances, violated the Order and send PDF documents and not the Quickbooks data file.

7. There can be no justifiable reason for Defendant Kennedy's actions except to delay, harass and hold the Special Magistrate in contempt as well as to thwart Plaintiff Club in its efforts herein.

8. Defendant Kennedy objected to the production of the electronic data file arguing it was burdensome and time consuming to produce a downloaded copy of the electronic data (which belongs to Plaintiff Club to begin with) and instead he produced PDF versions of the data which required more time and more effort than simply providing the Ordered electronic data file. This alone shows the disingenuousness of Defendant Kennedy's arguments and actions.

WHEREFORE, Plaintiff Club moves the Special Magistrate for an Order requiring Defendant Kennedy within twenty-four (24) hours to deliver an electronic copy of the Club's QuickBooks data file to Plaintiff Club, payment of Plaintiff Club's attorney fees for this Motion and time spent, holding Defendant Kennedy in Contempt

of Court and, if Defendant Kennedy fails to comply therewith, an Order striking his pleadings and entry of a default against him, along with any other relief the Special Magistrate deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 20th day of October 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, Thomas M. Lynch, IV Special Magistrate tomlynchmediation@gmail.com

/s/Edward F. Holodak
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IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR ROWARD COUNTY FLORIDA

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

CASE NO.: CACE 20-005993 (o8)

Plaintiff,

EXHIBIT #1

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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CASE NO.: CACE 20-005993 (08)

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

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

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.



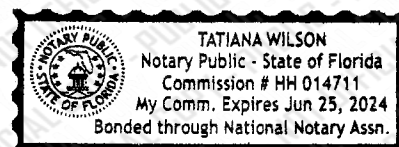
MATTHEW J. KAHN, CPA.

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:



IN THE CIRCUIT COURT OF
THE 17th JUDICIAL CIRCUIT IN
AND FOR ROWARD COUNTY
FLORIDA

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

CASE NO.: CACE 20-005993 (08)

Plaintiff,

v

EXHIBIT #2

CARL KENNEDY, individually,

Defendant.

REPORT OF SPECIAL MASTER ON DISCOVERY ISSUES

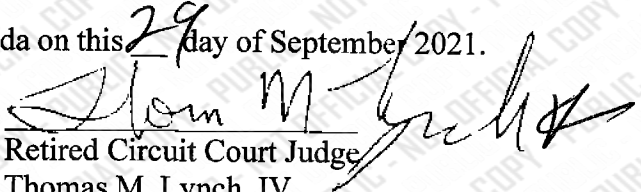
THIS CAUSE having come to be heard before the Special Magistrate on September 27, 2021, in connection with Defendant's Motion for Contempt, to Compel and for Sanctions Due to Plaintiff's Bad Faith and Failure to Provide Discovery Responses Pursuant to Agreed Order and Defendant's Motion for Protective Order, and on Plaintiff's Motion to Compel Better Responses to Second Request to Produce and Sanction, the Special Magistrate, considering the arguments of Counsel, and being otherwise fully advised, it is:

ORDERED AND ADJUDGED:

1. Defendant's Motion for Contempt, to Compel and for Sanctions Due to Plaintiff's Bad Faith and Failure to Provide Discovery Responses Pursuant to Agreed Order and Defendant's Motion for Protective Order is **GRANTED in Part/DENIED in Part**. The Motion to Compel Plaintiff's answers to Defendant's Third Set of Interrogatories, Third Request for Production of Documents, and all documents responsive to Defendant's "shareholder record request" dated April 30, 2021 is **GRANTED**. Plaintiff shall have fifteen (15) days to answer Defendant's Third Set of the Interrogatories propounded on May 8, 2021 and to provide to Defendant all documents responsive to Defendant's shareholder records request dated April 30, 2021. Defendant's request for Sanctions is **DENIED**.

2. Plaintiff Club's Motion to Compel Better Responses to Second Request to Produce and Sanction is **GRANTED in Part/DENIED in Part**. Defendant shall have fifteen (15) days to produce the electronic data solely related to Plaintiff. Plaintiff's request for Sanctions is **DENIED**. Defendant's Motion for Protective Order related to the electronic data, is **GRANTED in Part/DENIED in Part**. Defendant's Motion is **GRANTED** as to electronic data relating to any third-party. Defendant's Motion for Protective Order is **DENIED** as to production of the electronic data solely related to Plaintiff.

DONE AND ORDERED in Broward County, Florida on this 29 day of September 2021.


Retired Circuit Court Judge
Thomas M. Lynch, IV
Special Magistrate