

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. As a result, Plaintiff Club filed a Motion for Sanctions, in response to that Motion, the Honorable Thomas M. Lynch, IV acting as Special Magistrate, entered a Report and Recommendation (adopted by the Court) compelling Kennedy to produce the datafile by 5:00 PM on November 29, 2021. Copy of Report attached as Exhibit #3.

8. On November 30th, counsel for Kennedy informed Plaintiff Club that Kennedy would not produce the datafile until Monday, December 6th 2021 claiming Kennedy has personal issues.

9. 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. Kennedy's last minute claim of personal issues is not a justifiable excuse given that Kennedy was ordered to produce the datafile in September 2021 and Plaintiff Club first requested the datafile in February 2021 some ten months ago.

10. Defendant Kennedy has stalled, thwarted, delayed and frustrated Plaintiff Club's efforts to obtain *its own data* for over ten (10) months. In the mean time,

Kennedy has sought sanctions against Plaintiff Club for not providing exact dollar expenditures, dates and figures for each dollar that Plaintiff Club claims Kennedy has failed to account – despite the fact that it is Plaintiff Club suing Kennedy for an accounting! Plaintiff Club hopes the irony is not lost on the Court and Special Magistrate.

11. Kennedy when requested to produce the datafile, instead allegedly printed the date file and produce six (6) banker boxes of pages and then argued to the Court that Plaintiff Club should have to re-input the information into a new Quickbooks application and that it now had its data. When this argument failed and he was ordered to produce the datafile, he instead produced PDF pages of data and argued once again that Plaintiff Club now has its data and could data entry that information if it wanted to conduct a computer search of the data. When this specious argument failed and he was *again* ordered to produce the datafile, he is now too sick to produce the thrice ordered file.

12. Kennedy's actions should not be acceptable to this Court. Instead, given the history of Kennedy's actions, this Court should strike Kennedy's leadings and enter a default against him for contemptuous disobedience of multiple orders of the court.

WHEREFORE, Plaintiff Club moves the Special Magistrate for an Order finding Defendant Kennedy in willful disobedience of the prior Orders, holding him in contempt and striking his pleadings here, awarding an entry of default against him, requiring delivery of the datafile to Plaintiff Club within twenty-four (24) hours, payment of Plaintiff Club's attorney and any further relief this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 1st day of December 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
EDWARD F. HOLODAK, ESQ.
Attorney for Plaintiff
Fla. Bar No.: 059234
Edward F. Holodak, P.A.
7951 SW 6th Street, Ste. 210
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Tel.: 954-927-3436
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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,

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
EDWARD F. HOLODAK, ESQ.
Attorney for Plaintiff
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Edward F. Holodak, P.A.
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IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR ROWARD COUNTY FLORIDA

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.



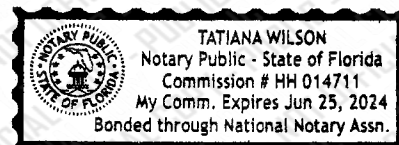
MATTHEW J. KAHN, CPA.

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

CARL KENNEDY, individually,

Defendant.

REPORT OF SPECIAL MASTER ON DISCOVERY ISSUES

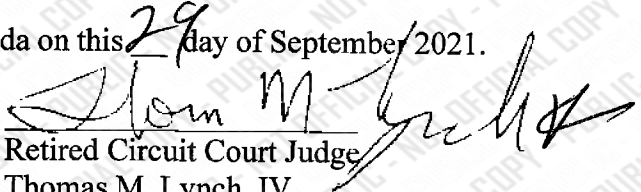
THIS CAUSE having come to be heard before the Special Magistrate on September 27, 2021, in connection with Defendant's Motion for Contempt, to Compel and for Sanctions Due to Plaintiff's Bad Faith and Failure to Provide Discovery Responses Pursuant to Agreed Order and Defendant's Motion for Protective 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

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

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

CARL L. KENNEDY, II

Defendant

REPORT ON PARTIES MUTUAL MOTIONS FOR SANCTIONS ON DISCOVERY

THIS CAUSE having come before the Court by agreement on Defendant's Motion to Compel and Sanction and Plaintiff's Motion to Compel and Sanction, the Court considering the agreement of the parties, the Court considering the pleadings herein, and being otherwise fully advised, it is:

ORDERED AND ADJUDGED:

1. Both Motions are simultaneously **Granted in Part and Denied in Part.**
2. Plaintiff Club, by 5:00 PM on November 29th, 2021 shall produce to Defendant Kennedy redacted attorney fee and accountant fee invoices on all litigation files since February 2020 to the November 2021 showing amounts billed and paid.
3. Defendant Kennedy shall keep all such invoices confidential and to be used only in this litigation without distribution to any other person or entity unless agreed to in writing by Plaintiff Club or further Order of the Court.
4. Defendant Kennedy, by 5:00 PM on November 29th, 2021 shall produce to Plaintiff Club a full and complete electronic version of the Quickbooks datafile of Plaintiff Club accounting data, the same data that he previously produced in hard copy and PDF format.

5. Both parties' request for sanctions is denied.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida on this 19 day

November 2021.

A handwritten signature in black ink, appearing to read "Thomas M. Lynch, IV", written over a horizontal line.

Special Magistrate Thomas M. Lynch, IV (Retired Judge)

Copies to:

Edward F. Holodak, Esq., pleadings@holodakpa.com

Scott J. Kalish, Esq., scott@scottjkalishlaw.com

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 SECOND REQUEST FOR PRODUCTION

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC., by and through its undersigned counsel, pursuant to Rule 1.350, Fla. R. Civ. P., requests Defendant, CARL KENNEDY, to produce the following documents for inspection and copying within thirty (30) days from the date of serve, to the Law Office of Edward F. Holodak, P.A., 7951 SW 6 St., Suite 210, Plantation, FL 33324.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 11th day of February, 2021, to Carl L. Kennedy, II, clktax@aol.com.

/s/ Edward F. Holodak
Edward F. Holodak, Esquire
Attorney for Plaintiff
Fla. Bar No. 059234
EDWARD F. HOLODAK, P.A.
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DEFINITIONS AND INSTRUCTIONS

As used herein, the terms listed below are defined as follows:

1. The term Defendant refers to Defendant CARL L. KENNEDY.
2. The term Plaintiff refers to POMPANO SENIOR SQUADRON FLYING CLUB, INC.
3. For any documents produced, documents provided shall be completed and, unless privileged, un-redacted, submitted as found in the company's files (e.g., documents that in their original condition were stapled, clipped or otherwise fastened together or maintained in separate file folders shall be produced in such form). The company may submit photocopies (with color photocopies where necessary to interpret the document), in lieu of original documents, provided that such copies are true, correct and complete copies of the original documents. Documents submitted shall be produced in the order in which they appear in the company's files and shall not be shuffled or otherwise rearranged. Mark each page with corporate identification and consecutive document control numbers. Place all documents produced in file folders. Mark each file folder with the corporate identification, the name of the person whose documents are in the folder and how the original file was labeled.

DOCUMENTS TO BE PRODUCED

1. Copy of any and all electronic backup data files for all accounting software utilized by you during your term as Treasurer for the Club for all accounting. Tax and financial record keeping for the Club.
2. Copy of any and all workbooks, ledgers, accounts, or written records utilized by you to prepare the financial statements, tax returns and account statements for the Club during your time as Treasurer for the Club.
3. Copies all contracts with the bookkeepers, tax professionals, or accountants which the Club entered to perform bookkeeping, preparation of financial statements or preparation of tax returns during your time as Treasurer of the Club.

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

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

CARL L. KENNEDY

Defendant/Counter-Plaintiff.

RESPONSES TO PLAINTIFF'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

I, Carl L. Kennedy, II, respond to Plaintiff's Request for Production. I generally object to all instructions and definitions contained in Plaintiff's Second Request for Production to the extent they differ from the Florida Rules of Civil Procedure.

1. Objection. (1) Accountant-client privilege (the requested documents, to the extent they still exist and are otherwise available and subject to discovery, are my personally purchased software programs which are not severable from my personal business clients with protected information not relevant to or discoverable in this matter); (2) Overbroad and burdensome; (3) Beyond the scope (to the extent this request seeks documents beyond the Statute of Limitations); and (4) Irrelevant at this stage of proceedings (this request relates to an accounting itself and is inappropriate unless and until Plaintiff has established its entitlement to an accounting in accordance with well-settled Florida law regarding this principle).

Without waiving the above objections, I am providing a "flash drive" to Plaintiff under separate cover containing the General Ledger Detail for the Club's revenue and expense accounts for the years 2017, 2018 and 2019.

2. Objection. (1) Accountant-client privilege (the requested documents, to the extent they still exist and are otherwise available and subject to discovery, are my personally purchased software programs which are not severable from my personal business clients with

protected information not relevant to or discoverable in this matter); (2) Overbroad and burdensome; (3) Beyond the scope (to the extent this request seeks documents beyond the Statute of Limitations); and (4) Irrelevant at this stage of proceedings (this request relates to an accounting itself and is inappropriate unless and until Plaintiff has established its entitlement to an accounting in accordance with well-settled Florida law regarding this principle).

Without waiving the above objections, 90% of the documents which this request seeks are already within Plaintiff's possession, custody and control, such as the Club's bank statements and prior year's tax returns.

3. None.

I hereby certify that on the 23rd day of April, 2021, I sent a copy of the foregoing via the Florida e-portal to Edward Holodak, Esquire at pleadings@holodakpa.com.

BY:

/s/ Carl L. Kennedy, II
Carl L. Kennedy, II
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304-552-0206
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