

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 RESPONSE TO DEFENDANT'S
MOTION FOR REHEARING
Subtitled the Tail Wagging the Dog

Plaintiff, Pompano Senior Squadron Flying Club, Inc. (Plaintiff "Club"), by and through its undersigned counsel, files this Response to Defendant Kennedy's Motion for Rehearing, and says:

1. Plaintiff Club finally after twenty months (July 2020) from when it first propounded its Request to Produce to Defendant Kennedy obtained an Order requiring Defendant Kennedy to provide a copy (fully accessible copy) of the Plaintiff's own financial and accounting data to it. Such Order was not the first Order Plaintiff obtained requiring Defendant Kennedy to produce the electronic datafile. In fact, this Court entered Orders, requiring Defendant Kennedy to produce the electronic data file to Plaintiff Club on:

- a. June 25, 2021;
- b. November 11, 2021;
- c. December 21, 2021; and finally on
- d. March 7, 2022.

2. Despite being Ordered on at least four (4) occasions to unequivocally produce the full access Quickbooks datafile, Defendant Kennedy instead:

- a. Produce nothing;
- b. Produce hard copies of what he alleged to be then entire datafile;
- c. Produced electronic PDF copies of what he alleged to be the entire datafile;
- d. Filed a Motion for Rehearing alleging that Plaintiff Club had no legitimate basis to request full access **to its own data!**

3. What more legitimate basis does Plaintiff Club need to produce to this Court besides this Court's very own ORDERS requiring the production by Defendant Kennedy?!

4. How is it that a party can defy three court orders to produce data and then not only request a rehearing on the fourth (4th) Order by allege that the Plaintiff who owns the fully accessible datafile "has no legitimate basis to request" the thrice ordered data?!

5. If this Court requires more justification than its own three (3) prior Orders which Defendant Kennedy violated, Plaintiff Club relies upon Florida statutes for its "legitimate basis."

6. Florida statutes (both Chapters 607 and 617, Florida's corporation statute and its not-for-profit corporation statute) gives a prior director 72 **hours** (emphasis added) to turn over all corporate assets after leaving office. Based upon the pleadings by both parties herein Defendant Kennedy stopped serving as Plaintiff Club's treasurer and director in January 2020. 26 **months** ago which calculate to **18,980** hours, just slightly more than the 72 hours required by statute.

7. There is no dispute as to the following:

- a. Defendant Kennedy was an officer (treasurer) and director of Plaintiff Club until January 2020.
- b. The electronic Quickbooks data file is Plaintiff Club's data.
- c. The datafile was created as part of the ongoing business of Plaintiff Club.

d. The datafile is an asset of Plaintiff Club.

8. Plaintiff Club has a legitimate need for the datafile, has legitimate need for full access to its own data (a point that Plaintiff Club is beyond exasperation with having to argue with Defendant Kennedy). Based upon the attached affidavit in support hereof, Plaintiff Club has a very legitimate need to access.

9. Defendant Kennedy stands accused of misappropriating hundreds of thousands of dollars from Plaintiff Club, of filing fraudulent liens against Plaintiff Club's assets in Defendant Kennedy's personal name despite Defendant Kennedy having never provided the alleged funding to Plaintiff Club to support the legality of those liens, is the third-party Defendant in two (2) other lawsuits in which Plaintiff Club stands accused of borrowing money and not repaying same although no valid documents exists such as promissory notes, chattel mortgages, UCC-1 agreements, etc.

10. Defendant Kennedy, again despite having been ordered three (3) times in the past to produce the datafile in question, now asserts that Plaintiff can produce reports all it has to do it purchase some alleged and unnamed third-party software and jump through hoops to print such reports. The question to this Court is WHY? Why should the owner of the very datafile in question, the rightful possessor of such datafile (pursuant to the By-Laws – which states only the current Treasurer shall hold the corporate financial books of Plaintiff Club and statutory authority) have to jump through more hoops *after having obtained four (4) court orders* already? Why is the tail allowed to wag the dog?

11. Plaintiff Club needs to be able to prepare for trial and produce evidence in this case against Defendant Kennedy to prove its claim, evidence that among other things is based upon its ability to produce reports from Quickbooks or through other means by having the capability of exporting its *own* data to other applications. Steps that Defendant Kennedy has effectively blocked for more that two (years) by violating court orders, by producing other than he was ordered to produce by having the tail wag the dog and

Plaintiff Club seems to have the burden to explain time and time again why it has the audacity to demand its own data back from a former director, or to justify why it wants its own data to prepare for trial against the very person who has had the ability to manipulate the datafile since he left office.

12. The point should not be lost on the Court that the rightful owner of the data is being prevented from having access to it, while the person who stands accused of misappropriating funds is allowed to have full control of that very same datafile? That the Defendant is allowed to have privileges against Plaintiff Club's data that Plaintiff Club is prevented from having by that same defendant and must justify to this court five (5) times now as to why that should be allowed?

13. Surely, this cannot be deemed to be the proper outcome or a fair and reasonable resolution to this issue.

14. The data is and has always been the asset of the corporation that is Plaintiff Club, under the Club's By-Laws only the treasurer can possess the Club's financial data, Defendant Kennedy is no longer the Club's treasurer and has not been since January 2020, yet Defendant Kennedy remains the *only* person in possession of the data in such a manner as to be able to edit the data, export the data to other programs to run reports against, print reports from Quickbooks itself and do any other manipulation of Plaintiff Club's data that he desires. All the while claiming Plaintiff Club as "no legitimate basis to request full access to its own data.

15. Lastly, in his Motion for Rehearing Defendant Kennedy asserts, wrongfully, that Defendant Kennedy has met his obligations under Rule 1.350, Fla.R.Civ.P. This simply is FALSE, based upon each of the above cited Orders, Defendant Kennedy was obligated to turn over the *full* datafile to Plaintiff Club. To date, Defendant Kennedy has yet to comply with any such Order of this Court and the tail continues to wag the dog.

WHEREFORE, Plaintiff Club moves this Court for an order denying Defendant Kennedy's Motion for Rehearing, an award of court costs and attorney fees 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 16th day of March 2022, 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.
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_____/

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:

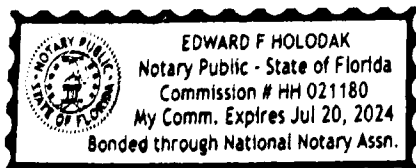
I am Matthew J. Kahn, CPA and I attest to the following based upon my personal knowledge:

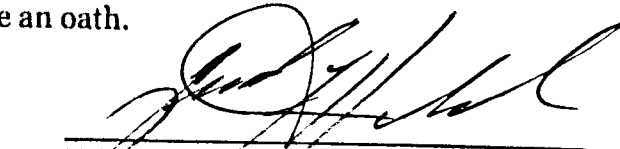
1. I am a practicing accountant in Broward County, Florida, having been licensed since *SEE ATTACHED*
2. I wrote the attached letter at the request of the Plaintiff in this case and all statements contained therein are true and factually correct.



MATTHEW J. KAHN, CPA.

SWORN TO AND ACKNOWLEDGED BEFORE ME, by means of [X] physical presence or [] online notarization, the undersigned authority, the foregoing instrument, this 16 day of March 2022, by MATTHEW J. KAHN, CPA, who is personally known to me and who did take an oath.





NOTARY PUBLIC
My Commission Expires:


MATTHEW J. KAHN, PA
CERTIFIED PUBLIC ACCOUNTANTS

Matthew J. Kahn, CPA

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March 16, 2022

Edward Holodak PA
Mr. Edward Holodak, Attorney
7951 SW 6 St Ste 210
Plantation FL 33324

RE: QuickBooks File

Mr. Holodak,

I received the QuickBooks file for Pompano Beach Flying Club. The username and password that was provided only allows me to view various reports on my screen.

I am unable to print, export data to excel and drill down into the detail of the various transactions reflected in the data to analyze information. These functions are needed in aiding you in this case in determining how and why transactions were posted as well as determining if we need to request source documents.

I therefore need to have administrative rights to this QuickBooks file. Without having this access, I am unable to provide the basic services needed regarding this case. The username and password for the administrative login is therefore required.

Finally, the client should be given full access to this file so that IF the IRS would has any questions or audits any returns filed, the client would be able to research and furnish that information to the Department of Treasury.

Sincerely yours,



Matthew J. Kahn, CPA

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LICENSEE DETAILS

8:56:39 AM 3/16/2022

Licensee Information

Name: **KAHN, MATTHEW JON (Primary Name)**
 Main Address: **7450 GRIFFIN ROAD
 STE 120
 DAVIE Florida 33314**
 County: **BROWARD**
 License Mailing: **7450 GRIFFIN ROAD
 STE 120
 DAVIE FL 33314**
 County: **BROWARD**
 License Location: **7450 GRIFFIN ROAD
 STE 120
 DAVIE FL 33314**
 County: **BROWARD**

License Information

License Type: **Certified Public Accountant**
 Rank: **CPA**
 License Number: **AC0028196**
 Status: **Current,Active**
 Licensure Date: **09/01/1995**
 Expires: **12/31/2022**

Special Qualifications **Qualification Effective**

Alternate Names

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