

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,

v.

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

CARL L. KENNEDY, II

Defendant

**DEFENDANT'S VERIFIED EMERGENCY MOTION FOR TEMPORARY INJUNCTION TO
MAINTAIN STATUS QUO**

COMES NOW, Defendant, CARL L. KENNEDY, II ("Mr. Kennedy") by and through the undersigned counsel, files this Emergency Motion For Temporary Injunction to Maintain Status Quo, and in support thereof states as follows:

1. Mr. Kennedy is a shareholder member of Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. ("Flying Club"). Mr. Kennedy is the former Treasurer and former member of the Board of Directors which was in office until February 12, 2020.
2. Subsequent to the annual election on February 12, 2020, Plaintiff's new Board of Directors (an entirely different Board than the Board on which Mr. Kennedy served), initiated a lawsuit against Mr. Kennedy, falsely alleging Mr. Kennedy had misappropriated or mishandled the Flying Club's funds while he was Treasurer.
3. In preparing his defense to Plaintiff's Third Amended Complaint and potential counterclaim, Mr. Kennedy properly requested records from Plaintiff as a member and shareholder of Flying Club, pursuant to Florida Statutes § 617.1602 and § 607.1602 on March 1, 2022. This was Mr. Kennedy's fifth (5th) proper shareholder records request, a copy of which is attached hereto as Exhibit "A".

4. On March 6, 2022, Mr. Kennedy received a response from the Flying Club's Treasurer, stating he would be traveling and would not have time to collect the requested documentation, a copy of the response is attached hereto as Exhibit "B".

5. On March 7, 2022, Mr. Kennedy contacted the Flying Club's current Treasurer to follow up as to when he would be complying with Mr. Kennedy's records request, a copy of the correspondence is attached hereto as Exhibit "C".

6. On March 13, 2022, Plaintiff Club sent an email to the members/shareholders of the Flying Club, containing the March 9, 2022, meeting "Minutes", along with Plaintiff's newly revised "Operating Rules", which were made effective retroactively to March 1, 2022, a copy of which is attached hereto as Exhibit "D".

7. On March 21, 2022, Mr. Kennedy was provided the new "Operational Rules" implemented by Plaintiff, a copy of which is attached hereto as Exhibit "E", which contains the following new regulation:

9. Actions against club (Legal or Litigation): Any member who is in any litigation or not in good standing with the club, will not be able to request documentation from club as a shareholder.

8. On March 24, 2022, Mr. Kennedy responded to the attempt of Plaintiff's management to totally preclude him from obtaining records as a shareholder, and referenced § 617.1602, Fla. Stat. and § 607.1602, Fla. Stat., a copy of which is attached hereto as Exhibit "F".

9. The relevant portions of § 617.1602(4)(a), Fla Stat., titled "Inspection of records by members" states *inter alia*, that "[t]his section does not affect: [...] [t]he right of a member in litigation with the corporation to inspect and copy records to the same extent as any other litigant."

10. Similarly, § 607.1602(6), Fla. Stat. provides "The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws." Subsection (7) makes clear that, "[t]his section does not affect [...] [t]he right of a shareholder to inspect and copy records under s. 607.0720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant."

11. On March 29, 2022, in **obvious retaliation**, Mr. Kennedy was informed that a Motion to expel him from Flying Club had been made by its management, and he received Notice of a meeting to be held on April 13, 2022, to address and vote on the Motion, a copy of which is attached hereto as Exhibit "G".

12. Pursuant to § 617.0607(1), Fla. Stat., "[a] member of a corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith."

13. On April 6, 2022, Mr. Kennedy sent a letter to Plaintiff's Board of Directors, demanding they withdraw the Motion to expel him, a copy is attached hereto as Exhibit "H".

14. To date, Mr. Kennedy's demand has been ignored by Plaintiff Flying Club.

15. Plaintiff Flying Club's Motion and intent to vote on Mr. Kennedy's expulsion at a meeting on April 13, 2022 is obviously made in retaliation and therefore not made in good faith.

16. As stated above, Plaintiff Flying Club has been concealing the financial circumstances of the corporation from its shareholders. It is attempting to defraud the shareholders regarding the financial circumstances of the Club. It is attempting to expel Mr. Kennedy from the club because he is a "whistleblower" and because he has challenged the management of Flying Club.

17. Plaintiff's actions will cause irreparable harm to both Mr. Kennedy and the other shareholders of the Flying Club if Plaintiff is permitted to expel Mr. Kennedy in retaliation for having exposed the gross negligence and mismanagement of the Club.

18. Mr. Kennedy will likely succeed on the merits of his defense against Plaintiff Club's allegations of misappropriation/mishandling of Club funds. To date, after two (2) full years of litigation, Plaintiff Flying Club has **failed to establish** that Mr. Kennedy mishandled or misappropriated **any** of Flying Club's funds when he was Treasurer.

19. The harm to Mr. Kennedy if this request for a temporary injunction to maintain the status quo is denied, is greater than any potential harm to Plaintiff if this request for an injunction is granted.

20. Additionally, monetary relief will be insufficient to remedy the harm that may result if Plaintiff's current management is permitted to proceed with its Motion and Mr. Kennedy is expelled from the Plaintiff's Flying Club, as the challenges Mr. Kennedy has made in connection with the current management, if not addressed, could result in the loss of the Club's corporate Charter, possible bankruptcy and/or a "Cease and Desist Order" to prevent continued operation of the Flying Club.

WHEREFORE, Defendant CARL L. KENNEDY, II, respectfully requests that this Honorable Court enter an Order temporarily enjoining Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC., from proceeding on its Motion to Expel him from Plaintiff Flying Club on April 13, 2022, together with any such other relief that this Court deems just and proper.

VERIFICATION

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this notice and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: 04-12-2022


CARL L. KENNEDY, II

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of April 2022 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.

KALISH & JAGGARS, PLLC.

/s/ Scott J. Kalish
SCOTT J. KALISH, ESQUIRE
Florida Bar No.: 118292
scott@scottjkalishlaw.com
DARA A. JAGGARS, ESQUIRE
Florida Bar No.: 1018603
dara@scottjkalishlaw.com
2161 Palm Beach Lakes Blvd.
Suite 309
West Palm Beach, FL 33409
(954)-990-9307
Attorney for Defendant

CARL L. KENNEDY, II
2929 S. Ocean Blvd. Ste. 510 Boca Raton, FL 33432
Phone: (304) 552-0206 E-mail: CLKTax@aol.com

March 1, 2022

VIA USPS PRIORITY MAIL
Pompano Beach Flying Club
c/o Mr. Gregory Gilhooly
1421 S. Ocean Blvd.
Suite #102
Pompano Beach, FL 33062

VIA USPS PRIORITY MAIL
Pompano Beach Flying Club
c/o Mr. Tor Holm
2351 SW 26th Avenue
Fort Lauderdale, FL 33312

RE: Shareholder/Member Records Request

Mr. Gilhooly and Mr. Holm:

In accordance with Florida law, this is my demand as a shareholder/member of the Flying Club to inspect the following records at 10:00 a.m. (more than five (5) business days from today), on Thursday, March 10, 2022 at the above location of 2351 SW 26th Avenue Fort Lauderdale, FL 33312 or 1421 S. Ocean Blvd. Suite #102 Pompano Beach, FL 33312, or other reasonable time and location designated by you:

1. All accounting records of the Club existing since February 13, 2020 and specifically to include **monthly** P&L Statements for the periods Feb (02-13-20 thru 02-29-20) and March, 2020 thru December, 2020 and January, 2021 thru December, 2021 and January 2022 thru February 2022;
2. Bank statements for **all** Club bank accounts since February 12, 2020 thru February 28, 2022;
3. General ledger detail for **all** Club accounts since February 12, 2020 and specifically to include activity for **all** accounts from February 13, 2020 to February 29, 2020 and March, 2020 thru December, 2020 and January 2021 thru December, 2021 and January 2022 thru February 2022;
4. Documents reflecting the status of all recurring expenses of the Club as to whether current or delinquent, including but not limited to insurances, fuel, debt repayment or related interest expense to Bruce Ayala, Paul Sanchez, David Watkins or Carl

EXHIBIT - A

Kennedy and hangar expenses for the period from February 13, 2020 up to and including February 28, 2022;

5. Alphabetized list, with names and e-mail addresses of all Club members as of the date of the day prior to the date of inspection of these records;
6. Copies of all documents (other than privileged/confidential communications) relating to any lawsuit against the Club by any individual or entity. Specifically copies of all non-privileged/confidential litigation documents for Hill lawsuit, Borer lawsuit, Sunwood lawsuit and Sanchez lawsuit including all e-mail or other correspondence with Plaintiff Hill and Plaintiff Borer and Plaintiff Sunwood and Plaintiff Sanchez; all documents related to attorney's fees due to all litigation, including attorney billing statements/invoices from court reporter services and copies of checks payable to both.
7. Invoices/Billing statements for any accountant or forensic accounting firm retained by the Club since February 12, 2020.
8. Invoices/Billing statements for any lawyer or accounting firm retained by the Club since February 12, 2020.
9. All electronic data containing the above requested documents and information in a PDF format.
10. All electronic data containing the above requested information in a QuickBooks QBB file, or other software program used by PBFC, in an accessible format.
11. All communications between PBFC and the SBA related to the EIDL program or any other loan program.

The purpose(s) of this request is (are) to determine: 1) whether the Club is currently operating at a loss; 2) whether the membership has significantly increased or decreased since the new Board of Directors and slate of new Officers was elected on 2/12/20; 3) to ascertain the veracity of the Treasurer's stated liabilities of the Club as of February 28, 2022; 4) to verify that the monthly ongoing necessary expenses of the Club are still being paid timely; 5) to ascertain how many corporate dollars are being spent on legal fees; 6) to ascertain how many corporate dollars are being spent on accounting and legal fees; 7) to ascertain the contingent liabilities of the Club; and 8) to determine whether or not the club is operating effectively; and 9) any and all other purposes permitted by Florida law.

Thank you for your anticipated cooperation with this Records Request.

Respectfully,


Carl L. Kennedy II

From: pbfclub.treasurer@gmail.com,
To: clktax@aol.com,
Cc: PBFClub.President@gmail.com,
Subject: Letter
Date: Sun, Mar 6, 2022 9:45 am

Received your letter yesterday. I will be travelling for work from today and until March 16th so I will not have time to collect all your requested documentation.

Tor Holm - Treasurer
Pompano Beach Flying Club
954 451 9212

NOT AN OFFICIAL COPY - PUBLIC ACCESS - NOT AN OFFICIAL COPY

From: clktax@aol.com,
To: pbfclub.treasurer@gmail.com,
Cc: PBFClub.President@gmail.com,
Bcc: clktax@aol.com,
Subject: Re: Letter PBFC - 5th Stockholder Record Request
Date: Mon, Mar 7, 2022 5:23 am

Tor,

Please provide me a date certain to fulfil my fifth Stockholder Record Request.

In the interim, please provide me a detailed description as to each payee and amount for each item used to derive the amount of \$35,198.67, "Total Other Current Assets", which you reflected on the PBFC Balance Sheet dated January 31, 2022.

With Due Respect,

Carl Kennedy

EXHIBIT - C

From: NoReply@timesync.com,
To: clktax@aol.com,
Subject: March 2022 Membership Meeting Minutes
Date: Sun, Mar 13, 2022 11:07 am

Members,

Attached are the minutes from our most recent Membership Meeting held on Wednesday, March 09, 2022, at American Flyers.

Please ensure you read the Operational Rules which have been updated and approved.

Thank you,

Gregg Galyo
PBFC, VP

Attached file: [PBFC Meeting Minutes 09 March 2022.pdf](#)

Attached file: [Pompano Beach Flying Club Balance Sheet 2022-03-04-22_02.pdf](#)

Attached file: [Pompano Beach Flying Club Profit and Loss 2022-03-04-22_02.pdf](#)

Attached file: [Operational Rules 09 March 2022.pdf](#)

Pompano Beach Flying Club OPERATIONAL RULES

Inactive member may return to active status upon request and will be given priority over other applicants at the time. May also be subject to a club CFI check out per paragraph 2.

9. Actions against club (Legal or Litigation):

Any member who is in any litigation or not in good standing with the club, will not be able to request documentation from club as a shareholder.

10. Changes and Amendments:

- A. Changes to, or amendments to these Operational Rules may be approved only by the majority vote of the Board of Directors or by a majority vote of the Club members present at a regular Club meeting.

From: pbfclub.treasurer@gmail.com,

To: clktax@aol.com,

Cc: PBFClub.President@gmail.com, scott@scottjkalishlaw.com,

Subject: Re: Letter PBFC - 5th Stockholder Record Request

Date: Mon, Mar 21, 2022 2:22 pm

Carl. First you have not been charged any late fees anytime. Only members that are late according to our latest Op Regs will be charged late fees when they pass the limits set in the Op regs. The newly approved op regs was attached in the monthly meeting email from VP.

In regards to the stockholder request for documentation I kindly ask that you read article 9 in Op regs. I have copied the article below to make it simple. This was approved at the last monthly meeting.

9. Actions against club (Legal or Litigation): Any member who is in any litigation or not in good standing with the club, will not be able to request documentation from club as a shareholder.

Tor Holm - Treasurer
Pompano Beach Flying Club
954 451 9212

From: clktax@aol.com,
To: pbfclub.treasurer@gmail.com,
Cc: PBFClub.President@gmail.com, scott@scottjkalishlaw.com, pbfclubggsecretary@gmail.com, pbfclub.vp@gmail.com,
pbfclub.treasurer2@gmail.com,
Bcc: clktax@aol.com,
Subject: Re: Letter PBFC - 5th Stockholder Record Request
Date: Thu, Mar 24, 2022 1:20 pm

Tor,

Really? Really, Tor?

It's painfully obvious PBFC is hiding the financial activity of the Club from the shareholders.

Does the BOD think it can override the Florida Statutes to prevent shareholders from having access to financial documents and information per the Florida Statutes?

Do read each Section of the FL Statutes below, which could not be clearer:

FL Statute Section 617.1602 Inspection of records by members.

(4) This section does not affect:

(a) The right of a member in litigation with the corporation to inspect and copy records to the same extent as any other litigant.

FL Statute Section 607.1602 Inspection of records by shareholders.

(6) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(7) This section does not affect:

(a) The right of a shareholder to inspect and copy records under s. 607.0720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant

I do expect compliance with my Shareholder Record Request and receiving the requested records by the close of business tomorrow, March 25, 2022.

With All Due Respect,

Carl Kennedy

EXHIBIT - F

EXHIBIT - F

From: pbfclubggsecretary@gmail.com,

To: clktax@aol.com,

Cc: pbfclub.president@gmail.com, pbfclub.vp@gmail.com, pbfclub.treasurer@gmail.com, pbfclub.opsdirector@gmail.com,

Subject: [PBFC] Notice of Hearing

Date: Tue, Mar 29, 2022 10:29 am

Attachments: Kennedy-Notice.pdf (169K)

Dear Mr. Kennedy,

This email and attached correspondence serves as formal notice of the hearing scheduled as part of the monthly membership meeting of the Pompano Beach Flying Club being held on Wednesday, April 13, 2022 at 7:00pm.

You will be afforded ample time to address the board and membership on the matter. Your participation is encouraged.

Best regards,

tf.

--

Tyler Frederick

Secretary

Pompano Beach Flying Club

EXHIBIT - G

March 28, 2022

Pompano Beach Senior Squadron Flying Club Inc.
d/b/a Pompano Beach Flying Club
PO Box 10241
Pompano Beach, FL 33062

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

SENT VIA U.S MAIL AND ELECTRONIC MAIL TO CLKTAX@AOL.COM ONLY

_____ **Re: Notice of Hearing**

Dear Mr. Kennedy,

On Thursday, March 24, 2022, the Board of Directors made a motion to remove you from the club as the following allegations are being litigated:

- Mishandling of club funds during your tenure as Treasurer
- Placement of fraudulent liens upon club aircraft

You are hereby notified per Article 6, Section 7 of the Pompano Beach Flying Club bylaws, an item has been added to the agenda for the membership to hear this matter at the regular membership meeting scheduled for **Wednesday, April 13, 2022 at 7:00pm.**

This meeting will be held at:

American Flyers
801 NE 10 St
Pompano Beach, FL 33060

You may also attend via Zoom at the link provided below:

<https://us02web.zoom.us/j/6965099064?pwd=MTNpT01EQkhTMDRxWkdKbTcwS0s4dz09>

Meeting ID: 696 509 9064 / Passcode: DLj9Mc

Sincerely,



Tyler Frederick
Secretary

EXHIBIT - G

From: clktax@aol.com,

To: pbfcclubggsecretary@gmail.com,

Cc: pbfcclub.president@gmail.com, pbfcclub.vp@gmail.com, pbfcclub.treasurer@gmail.com, pbfcclub.opsdirector@gmail.com,

Subject: Re: [PBFC] Notice of Hearing

Date: Wed, Apr 6, 2022 11:25 am

To The Officers and Directors of PBFC,

In accordance with Florida law, the purpose of this letter is to demand you withdraw your Motion to expel me as a member and shareholder of PBFC and, remove this from the agenda for the meeting on April 13, 2022.

This Motion was not made in good faith but is a retaliatory response for my 5th proper Shareholder Record Request dated March 1, 2022.

It would be in your best interest to consult with your attorney and govern yourselves, accordingly.

With Due Respect,

Carl Kennedy

EXHIBIT - H