

IN THE COUNTY COURT IN AND FOR BROWARD COUNTY FLORIDA

Steven J. Borer,
Plaintiff

vs.

Pompano Senior Squadron Flying Club,
D/B/A Pompano Beach Flying Club, Inc
Defendant.

Case No.: COWE 20 22099 (81)

MEMORANDUM TO COURT IN RESPONSE TO DEFENDANT'S TRIAL MEMORANDUM

Now comes Steven J. Borer, Plaintiff *Pro Se*, to respectfully ask the Court to review this Response to Defendant's Trial Memorandum, which was filed with only one business day before trial, before the Court issues its decision. This is my response.

1. Defense Counsel, Edward Holodak lied to this Court at trial yesterday.
2. I had filed a Motion to Produce certain documents at trial. Defendant agreed to produce these documents. These documents would show that the Club was in fact refunding Membership fees in 2018, 2019, and even 2020. They would also show that the Club did not change the Bylaws regarding the Membership fee until a special meeting in May, 2020.
3. Defendant's Attorney Holodak was asked *directly* by the Court why these financial documents were not brought to trial to corroborate Club President Mr. Greg Gilhooly's direct testimony. Attorney Holodak *testified* that the Defense had in fact subpoenaed the bank for these records in another matter, but they were not available. Mr. Holodak replied in the affirmative that he HAD subpoenaed these records in the case the Defendant is litigating against Carl L. Kennedy, but produced no evidence that he had in fact done so. An excerpt of the transcript is being ordered and will be filed as soon as it is received.
4. I ask the Court to take Judicial Notice of Broward County Case No. CACE 20005993. No subpoena is contained in this court docket and this is the ONLY pending litigation against the Club. The only way Defendant could properly subpoena bank records would have been pursuant to Florida Rule of Civil Procedure 1.351, which would have required they provide ten (10) days notice to Mr. Kennedy to object to such a subpoena. Such notice would have had to be served to Mr. Kennedy via the eportal and therefore docketed in this matter. The absence of such an entry in the Clerk's docket is proof that

Defendant's counsel lied to the Court at trial when Attorney Holodak stated he has subpoenaed bank records in another case.

5. Moreover, the Board of Directors and Officers of the Club would not need a subpoena to access bank records as they have access to any bank records online.
6. The Defendant was asked and agreed to produce at the trial meeting Minutes from 2018, 2019, and 2020. They did not bring these documents to trial. The Court asked for these documents to be provided by Wednesday, January 13th, 2021. The document provided by Defendant is the Minutes of the May 4, 2020 Special Meeting.
7. The Meeting Minutes of the Special Meeting in May, 2020 where current/future stock value was determined conspicuously do not contain any record of the Defendant's attempt to abandon its commitment as stated in the Operational Rules which were in effect up until the May meeting. The attached email dated May 8, 2020 to Attorney Edward Holodak from Attorney Wendy Hausmann regarding Defendant's Minutes of the May 4, 2020 Special Meeting reflects the falsity of Defendant's testimony at trial through its President.
8. No direct evidence of the Club's financial condition was entered into evidence except the testimony of the Club President. Defendant's Club President was not credible. He contradicted his own testimony and tried to backtrack several times. The Club's President testified under direct examination that the Club had in fact returned club membership fees during 2018, 2019, and 2020, but then stated there had been no refunds of the \$1700 membership fee. The President admitted that some refunds were made, even though he says they changed the Bylaws. He said the Club may have to file for bankruptcy but then admitted the Club was profitable. He had selective and convenient knowledge of prior Board actions, club finances, and prior meeting details.
9. A contract was formed between myself and Defendant on April 12, 2018 when the membership agreement was signed and a check was tendered to the Defendant. The check was received into evidence without objection.
10. I completed my part of the contract. Defendant breached their part of the contract. What the new Board of Directors changed or did in 2020 is irrelevant.
11. Defendant's Operational Rules in effect when the contract was formed are unambiguous and state the \$1700 membership fee is refundable to a member in good standing, less any amounts due in arrears to the club. The Defendant's Operational Rules were accepted as evidence without objection. The Club introduced no direct evidence the I was not in good standing when I left the Club.

12. The Membership agreement references and includes BOTH Bylaws and Operational Rules, but nowhere does it say Bylaws trump Operational Rules. The average person would not understand Bylaws or the concept that his \$1700 might not be returned. The average person would not see any conflict between "stock shares" and refundable membership fee.
13. Defendant argued that the Defendant's Bylaws are controlling, while I argue that the Bylaws and the Operational Rules are separate and can be read independently giving both meaning. Contract construction requires the Court to give meaning to both of the seemingly conflicting statements in a contract if possible.
14. The new Board of Directors can change the "refundable deposit" language in the Operational Rules prospectively but not retroactively, without my consent.

I thank the Court for its time and consideration in this matter.

I hereby certify that a true and correct copy of the foregoing has been served to Edward Holodak, Esq. via email at the email addresses he filed and hand delivered to the Clerk of Court this 12th day of January, 2021.

Respectfully,



Steven J. Borer
601 NW 73rd Avenue
Plantation, FL 33317
borersj@g.cofc.edu

From: Carl Kennedy <clktax@aol.com>
Date: January 11, 2021 at 4:40:07 PM EST
To: borersj@g.cofc.edu
Subject: Fwd: PBFC - Minutes of 5/4/20 Special Meeting
Reply-To: Carl Kennedy <clktax@aol.com>

Mike,

As we discussed. The below e-mail was written by Attorney Wendy Hausmann to Attorney Edward Holodak regarding the Minutes of the Special Meeting held on May 04, 2020 by the then new PBFC BOD.

Respectfully,

Carl

—Original Message—

From: hausmannw@aol.com
To: edward@holodakpa.com <edward@holodakpa.com>
Cc: clktax@aol.com <clktax@aol.com>
Sent: Fri, May 8, 2020 9:32 am
Subject: PBFC - Minutes of 5/4/20 Special Meeting

Mr.. Holodak:

I have been provided a copy of the Minutes of the Special Meeting held by the PBFC Board of Directors on May 4, 2020. Unfortunately, the Minutes are inaccurate and must immediately be corrected to include the conspicuous omission of the Motion made by Robert Breeden to disavow and default on the monies owed to former members of PBFC. You see, Mr. Holodak, I was "present" for that Zoom meeting. I am a witness and will testify to Robert Breeden's Motion for attempted theft of former members monies. I personally saw his face and heard him speak the words. The omission from

the Minutes is hardly inadvertent. It is reprehensible, outrageous and reveals the new Board of PBFC and its Officers to be both thieves and liars. Since I will be a witness to the events at the Special Meeting on May 4, 2020, I have already provided the contact information of a collection attorney to Carl Kennedy for dissemination to current members or former members as may be necessary or appropriate (current members are also entitled to the return of their \$1700 should they decide to withdraw from PBFC at this point as that is the contract into which they entered when they joined PBFC). My colleague will easily and without hesitation subpoena the "Zoom" records pertaining to the meeting held on May 4, 2020 to be used in any action, and of course, I can also provide him with a list of all participants at the Special Meeting.

The purpose of this email is solely to demand that your client correct the Minutes of the Special Meeting held on May 4, 2020 to accurately contain and reflect the Motion made by Robert Breeden during said meeting, as well as the immediately following response to same by the PBFC President in connection with a "non-refundable deposit", neither of which issues were noticed for this Special Meeting. Your client's underhanded, sneaky and far from transparent conduct will not be ignored or tolerated, nor will it be kept hidden or secret.

Please do not reply to this email as it will be not be read. This email is being sent solely to put you and PBFC on notice; it is not to open a dialogue between us.

Thank you,
Wendy A. Hausmann

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