

IN THE COUNTY COURT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. COWE20022099 (81)

STEVEN J. BORER,  
MICHAEL W. BORER,

Plaintiffs,

vs.

POMPANO BEACH FLYING CLUB,  
GREGORY GILHOOLY,

Defendants.

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NON-JURY TRIAL

BEFORE THE HONORABLE PHOEBEE FRANCOIS

VIA ZOOM

- - -

DATE: MONDAY, JANUARY 11, 2021

TIME: 10:01 A.M. - 11:07 A.M.

1 APPEARING VIA ZOOM ON BEHALF OF PLAINTIFFS:

2 STEVEN J. BORER, PRO SE  
3 MIKE BORER, PRO SE  
4 601 NW 73rd Avenue  
5 Plantation, FL 33317  
6 (803) 517-4244

7 APPEARING VIA ZOOM ON BEHALF OF DEFENDANTS:

8 EDWARD F. HOLODAK, ESQ.  
9 EDWARD F. HOLODAK, PA  
10 7951 SW 6th Street, Suite 210  
11 Plantation, FL 33324  
12 (954) 927-3436  
13 edward@holodakpa.com

14

15 ALSO PRESENT:

16 Laurie, Clerk

17 Wendy Hausmann

18 Daniel Anderson

19 David Watkins

20 Greg Worley

21 Casey Borer

22

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5	PLAINTIFF'S	DESCRIPTION	ID'D	ADMITTED
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1 BE IT REMEMBERED, that the following  
2 proceedings were taken in the above-styled cause before  
3 Judge Phoebee Francois, via Zoom, at 10:01 a.m. on  
4 Monday, the 11th day of January, 2021, to wit:

5 THE COURT: It looks like we have several  
6 individuals on the line. So I just want to know  
7 who's here, make sure the parties are here.

8 We're here on case number COWE2022099 --

9 MR. STEVEN BORER: Your Honor, Mr. Steven  
10 Borer.

11 THE COURT: -- Steven Borer versus Pompano  
12 Beach Flying Club.

13 I'm sorry. So, go ahead, Mr. Borer, you were  
14 going to just go ahead and announce your presence.

15 MR. STEVEN BORER: Yes, Your Honor, I'm here  
16 and ready.

17 THE COURT: Okay. That's Steven Borer.

18 MR. HOLODAK: Judge, Edward Holodak appearing  
19 on behalf of the defendant, Pompano Flying Club.  
20 With me is Steven -- I'm sorry, Gregory Gilhooly,  
21 who is the president of the club at this time.

22 THE COURT: Okay. Who else is on the line?  
23 Do you guys have witnesses on the line?

24 THE CLERK: Good morning, Your Honor, this is  
25 Laurie, clerk of courts.

1 THE COURT: Hi, Laurie. How are you?

2 THE CLERK: I figured you wouldn't see the  
3 right name. Yes, that's me. Thank you, Your  
4 Honor.

5 MS. HAUSMANN: Good morning, Your Honor, Wendy  
6 Hausmann. I'm just an observer.

7 THE COURT: Okay. Good morning.

8 MS. HAUSMANN: Good morning.

9 THE COURT: All right. Who else do I have  
10 here?

11 MR. MICHAEL BORER: Good morning, Judge.  
12 Michael Borer. I'm a witness for the plaintiff.

13 THE COURT: Okay. There's a couple of other  
14 folks on.

15 MR. ANDERSON: I am Daniel Anderson. I'm just  
16 an observer.

17 THE COURT: Okay.

18 MR. WATKINS: Good morning, Judge.

19 THE COURT: Anyone else?

20 MR. WATKINS: Good morning, Judge. Can you  
21 hear me?

22 THE COURT: Yes, I can.

23 MR. WATKINS: I'm David Watkins, former member  
24 of the club and a former board member, just as an  
25 observer.

1 THE COURT: Oh, just an observer. Okay.

2 All right. Anyone else?

3 There's a Casey Borer. Are you a witness?

4 MR. WORLEY: Hi. Greg Worley, director and  
5 officer of the club. Just observing today.

6 THE COURT: Just observing, okay.

7 Is that everyone?

8 MR. MICHAEL BORER: Your Honor, my wife is on  
9 her phone, Casey Borer. You see her. She's  
10 trying -- she's on her computer. She's trying to  
11 get it to work.

12 THE COURT: All right. I do see her there.  
13 So is she going to be testifying or is she just  
14 observing?

15 MR. MICHAEL BORER: Just observing.

16 THE COURT: All right. So, Mr. Borer, you're  
17 the only witness then that's on the line?

18 MR. MICHAEL BORER: I believe I am.

19 THE COURT: All right. Either of the parties  
20 wish to invoke the rule?

21 MR. HOLODAK: Yes, ma'am, I do.

22 THE COURT: All right. So, Mr. Michael Borer,  
23 I'm going to place you into one of our breakout  
24 rooms until we are ready to have you come back in.

25 All right. And it appears you're the only

1 witness. So I'm going to presume that it won't be  
2 for long. Okay?

3 MR. MICHAEL BORER: Thank you.

4 THE COURT: All right. I'm going to assign  
5 you to breakout room one. You'll get an  
6 invitation. You just have to accept the invitation  
7 and it will take you to that room.

8 Okay. Perfect.

9 All right. So let's get started.

10 MR. STEVEN BORER: Your Honor, would you like  
11 me to start with an opening statement?

12 THE COURT: Sure. Mr. Steven Borer, are you  
13 an attorney?

14 MR. STEVEN BORER: I am not, no.

15 THE COURT: You're pro se.

16 So let me swear in Mr. Borer and Mr. Gilhooly.  
17 If you guys can both raise your right hands for me,  
18 please.

19 Do you solemnly swear or affirm the testimony  
20 you're about to give is the truth, the whole truth,  
21 and nothing but the truth?

22 MR. STEVEN BORER: Yes, Your Honor.

23 MR. GILHOOLY: I do.

24 THE COURT: All right. Very good.

25 So we're going to start with Mr. Borer. He's



1 going to just basically just give me a brief  
2 opening letting me know what this is about and what  
3 you expect for me to hear.

4 MR. STEVEN BORER: Okay. Your Honor, on  
5 April 12th, 2018, I applied and was accepted as a  
6 member of the Pompano Beach Flying Club. I  
7 submitted a signed application and on my behalf my  
8 father, Michael Borer, tendered a check for the  
9 refundable \$1,700 membership fee in accordance with  
10 the operational rules that were in effect on the  
11 date I joined the club.

12 The operational rules state that I receive the  
13 \$1,700 membership fee back when I withdraw from the  
14 club. I withdrew from the club on November 27th,  
15 2018 and I have not received my \$1,700 refundable  
16 membership fee and I would like it back.

17 THE COURT: So the \$1,700 is a refundable fee  
18 and once you leave the club you get that back?

19 MR. STEVEN BORER: Yes, Your Honor.

20 THE COURT: Is that what it says? Okay.

21 And that's according to the clubs bylaws?

22 MR. STEVEN BORER: According to their  
23 operating rules.

24 THE COURT: According to their operating  
25 rules, okay.

1 All right. Counsel for the -- for the club,  
2 did you wish --

3 MR. HOLODAK: Yes, ma'am.

4 THE COURT: -- to give a brief opening?

5 MR. HOLODAK: Just a brief opening, Judge.

6 Mr. Borer, Steven, did join the club in April  
7 of 2018 and he did submit a resignation in November  
8 of 2018. That part is not disputed.

9 What clearly is disputed is the fact that  
10 Mr. Borer says the money is refundable. The  
11 application itself that he signed that we submitted  
12 into evidence -- or will submit into evidence  
13 clearly says on it that the monies that he paid,  
14 his application, is subject to the terms of the  
15 club's bylaws.

16 The bylaws clearly say that the club board of  
17 directors vote to determine how much of the monies  
18 a withdrawing member are refundable. It says right  
19 in the bylaws that that's a vote taken by the  
20 board.

21 Mr. Gilhooly is here. He'll testify that the  
22 board took a vote based upon the fact that in 2018  
23 and actually 2019 and 2020, the club was operating  
24 at a deficit and therefore had no money to return  
25 to departing members. So in their best business

1 judgment, they voted that the refund for  
2 withdrawing members would be zero.

3 Mr. Borer's application clearly states that he  
4 is subject to the bylaws and to the future votes of  
5 the board. That's how the board voted. It's  
6 unfortunate, per se, that the club is in the  
7 financial condition that it's in, but that's where  
8 we are.

9 So under the case law that I've submitted in  
10 my trial memorandum of law, the Fourth DCA case  
11 from Allen and Wolfson says that these social  
12 clubs, the type of club that these people are  
13 involved with, are subject to the bylaws. The  
14 Allen case specifically from the Fourth DCA says  
15 there are no vested rights of members, that all of  
16 the members' rights are subject to the bylaws and  
17 to the votes of the board.

18 That's exactly what happened here. And while  
19 the board feels sympathetic to Mr. Borer and other  
20 members that may be in the same situation, the fact  
21 of the matter is you can't get blood from a stone,  
22 as the saying is. The club had no money to return.  
23 They voted not to return. And, again, according to  
24 the Allen case from the Fourth DCA, that's really  
25 the end of the story.

1           So we're ready to proceed, Your Honor.

2           THE COURT:   Okay.

3           MR. STEVEN BORER:   Your Honor, I would like to  
4           just state that I have submitted my application.  
5           It's two pages and I've submitted it into evidence.  
6           I will confirm that above my signature, when I  
7           agreed to the application, it says I agree to abide  
8           by the bylaws and the operational rules of the  
9           club.  It's not just the bylaws, as Mr. Holodak  
10          states.  It is both, the bylaws and operational  
11          rules.  And I have it.  They're two separate  
12          things.

13          THE COURT:   Okay.  Just so you understand,  
14          Mr. Borer, you do have to enter whatever it is that  
15          you wish to enter into evidence.  I have not  
16          reviewed anything in advance just so that I don't  
17          have any prejudgments or anything like that.  So I  
18          have not reviewed anything in this case.

19          MR. STEVEN BORER:   My apologies, Your Honor.

20          THE COURT:   So whatever you want me to -- no,  
21          I'm just -- I just want you to understand that you  
22          have to make sure that you enter -- whatever you  
23          want the court to consider, you want to make that  
24          argument and you want to enter that into evidence.

25          All right.  Counsel -- actually, Mr. Borer,

1 did you wish to call your first witness?

2 MR. STEVEN BORER: I would like to call my  
3 father, Michael Borer, as a witness.

4 THE COURT: All right. Someone named M-e-l  
5 was attempting to come in? Do either of you guys  
6 know who that is?

7 MR. STEVEN BORER: That is my girlfriend.  
8 She's just observing.

9 THE COURT: All right. You can go ahead and  
10 text her and tell her to try again.

11 MR. STEVEN BORER: Okay.

12 THE COURT: And I'll let her in.

13 MR. STEVEN BORER: Okay. Thank you.

14 THE COURT: All right. Mr. Borer, can I have  
15 you raise your right hand, please, so I can swear  
16 you in.

17 Do you solemnly swear or affirm the testimony  
18 you're about to give is the truth, the whole truth,  
19 and nothing but the truth?

20 THE WITNESS: I do.

21 THE COURT: Okay. Mr. Borer, you may proceed  
22 with your direct examination.

23 DIRECT EXAMINATION

24 BY MR. STEVEN BORER:

25 Q Mr. Borer, my first question is what is your

1 relationship to me?

2 A I'm your father.

3 MR. STEVEN BORER: Okay. Your Honor, I'd like  
4 to introduce evidence, Exhibit 1, which is a  
5 screenshot of the check that my father wrote as a  
6 membership fee to the club. And I believe I'm  
7 supposed to share my screen.

8 THE COURT: Let me give you permission.  
9 There you are.

10 MR. STEVEN BORER: Are you guys able to -- can  
11 you see it?

12 THE COURT: Yes, we can. Well, I can.

13 BY MR. STEVEN BORER:

14 Q Okay. Mr. Borer, did you write the check that  
15 is highlighted in a red box for a refundable \$1,700  
16 membership fee on my behalf to get me into the flight  
17 club?

18 A Yes, I did.

19 MR. STEVEN BORER: Okay. Your Honor, that's  
20 all I have.

21 And I would like to ask you, Your Honor, if  
22 Michael Borer could stay on during the rest of this  
23 call.

24 THE COURT: Okay. You have no more questions  
25 for him?

1 MR. STEVEN BORER: No, that is it.

2 THE COURT: Counsel, did you have any  
3 questions for Mr. Borer?

4 MR. HOLODAK: Sorry, Judge, I didn't realize I  
5 was muted.

6 Based upon the direct exam, I don't have any  
7 questions for Michael Borer.

8 THE COURT: Okay. Mr. Borer, did you have any  
9 other witnesses or did you even wish to call  
10 yourself as a witness?

11 MR. STEVEN BORER: I would like to call myself  
12 as a witness as well.

13 THE COURT: Okay. Go ahead.

14 MR. STEVEN BORER: So now I'd like to  
15 introduce Exhibit 2, which is my application. It's  
16 a two page document with some information on it.  
17 Let me pull it up. Let me share it.

18 THE COURT: Counsel, did you have any  
19 objection to entering the check into evidence?

20 MR. HOLODAK: No, Your Honor.

21 THE COURT: All right. Laurie, I'm going to  
22 enter the check as Plaintiff's Exhibit 1.

23 THE CLERK: I have that, Your Honor. I took  
24 it off the complaint.

25 THE COURT: All right. Great. Thank you.

1 (Plaintiff's Exhibit No. 1 was admitted into  
2 evidence.)

3 MR. STEVEN BORER: So on the screen is page 2,  
4 and I have page 1 if you would like to see it as  
5 well, which is dated April 12th, 2018 signed by me.  
6 And in red, highlighted, it says, "I hereby make  
7 application for membership in Pompano Beach Flying  
8 Club. I affirm that this application is complete  
9 and accurate. I agree to abide by the bylaws and  
10 operational rules of the club as published and as  
11 properly modified in the future."

12 So it is not just bylaws. It is the  
13 operational rules as well.

14 THE COURT: Okay.

15 MR. HOLODAK: Judge, I have no objection to  
16 the application coming in provided it's both pages  
17 so the record is complete.

18 THE COURT: All right. Let me see. Let's --  
19 do you have page 1?

20 MR. STEVEN BORER: Yeah, allow me to -- just  
21 give me a sec.

22 And that is page 1 of the application.

23 THE COURT: All right. Did you wish to  
24 offer --

25 MR. HOLODAK: No objection to the two pages --



1 THE COURT: -- page 1 and 2 into evidence,  
2 Mr. Borer?

3 MR. STEVEN BORER: Next --

4 THE COURT: Did you wish to offer both pages,  
5 1 and 2, into evidence?

6 MR. STEVEN BORER: Yes, Your Honor.

7 THE COURT: Okay. So hearing no objection  
8 from counsel, I am going to enter pages 1 and 2 of  
9 the application for membership as Composite  
10 Plaintiff's Exhibit 2.

11 (Plaintiff's Composite Exhibit No. 2 was  
12 admitted into evidence.)

13 THE COURT: Okay.

14 MR. STEVEN BORER: Okay. Next, I would like  
15 to introduce another piece of evidence, which are  
16 the operational rules. I believe it's a seven page  
17 document. There's a few -- there's a few parts  
18 that are relevant that I will show you. So allow  
19 me to share that.

20 THE CLERK: Your Honor?

21 THE COURT: Yes.

22 THE CLERK: On that first -- on the second  
23 exhibit, I'm sorry, Your Honor, for the application  
24 for membership, that wasn't filed with the original  
25 statement of claim. I can't -- I'm not sure how I

1 can admit that in without something to copy.

2 THE COURT: Mr. Borer, did you not provide  
3 this document?

4 MR. STEVEN BORER: It was -- it was submitted.  
5 I have it.

6 THE CLERK: Did you file it? I didn't see it  
7 with the complaint. That's why I'm asking.

8 MR. STEVEN BORER: It was not filed with the  
9 original complaint. It was added to evidence later  
10 on at a later date before the deadline of  
11 January 4th.

12 THE COURT: Do you have the date so she can  
13 pull it? Because she does have to have access to  
14 it.

15 MR. STEVEN BORER: Yeah, allow me to pull up  
16 -- pull it up.

17 MR. HOLODAK: Judge, if it makes things easier  
18 for the clerk, on the Bates stamped documents that  
19 my office submitted to the court, they are pages  
20 Bates stamps 1 and 2 of the documents that my  
21 office submitted. They're the same document that  
22 Mr. Borer has shared on the screen, so if the clerk  
23 would like to use the first two pages of my filing.

24 THE CLERK: On what date was that,  
25 Mr. Holodak?

1 MR. HOLODAK: I believe the 4th or the 5th.  
2 Whatever the pretrial order was. I can communicate  
3 with my secretary and find out.

4 THE CLERK: I see your witness exhibit list, I  
5 see a motion to -- order, request for production,  
6 response to request, a memorandum of law, but --  
7 I'm looking.

8 MR. STEVEN BORER: I submitted the  
9 application, both pages, on the 30th of December,  
10 2020. So that's where I -- that's the date that I  
11 have, the 30th.

12 THE CLERK: Bear with me, Your Honor, I'm  
13 trying to locate that.

14 THE COURT: That's fine.

15 THE CLERK: I found it, Your Honor. Thank you  
16 very much.

17 THE COURT: Okay. Great.

18 All right. Mr. Borer, go ahead.

19 MR. STEVEN BORER: So I would like to  
20 introduce the operational rules as evidence as  
21 Exhibit 3. Just let me grab that real quick.

22 THE COURT: And is that in the same filing?

23 MR. STEVEN BORER: Yes, Your Honor.

24 THE COURT: All right.

25 MR. STEVEN BORER: So can you guys -- you guys

1 can see the operational rules, Your Honor --

2 THE COURT: Yes.

3 MR. STEVEN BORER: -- I have here on screen?

4 So I would like to highlight attachment A of  
5 Pompano Beach Flying Club operational rules.

6 Section 6 here states that the membership fee is  
7 \$1,700. The individual is considered a member when  
8 he or she has submitted a properly prepared  
9 application which meets membership criteria and has  
10 paid the membership fee. When a member withdraws  
11 from the club, the membership fee of \$1,700 will be  
12 refunded less any outstanding balances.

13 And that is all I have.

14 THE COURT: All right. What do they mean by  
15 less any outstanding balances?

16 MR. STEVEN BORER: Your Honor, there are  
17 monthly dues and there's also these rates up here  
18 to rent aircraft. So those are whether you miss a  
19 monthly -- like a monthly due or you don't pay the  
20 club the rates that you use the aircraft, that's  
21 how you could create an outstanding balance.

22 THE COURT: Okay.

23 MR. STEVEN BORER: And that is all. That's  
24 all from me.

25 THE COURT: All right. Did you request the

1 refund to be given to you?

2 MR. STEVEN BORER: In -- I don't know the  
3 exact date, but after my resignation, my father had  
4 acted, I'd say, more like an agent. I didn't have  
5 any communication with the club or anyone other  
6 than an instructor at the time.

7 So he had asked for his money back and we were  
8 informed that the club was in -- was having  
9 financial issues and that eventually we would be  
10 paid. And this was in 2019, which they -- I don't  
11 have any information about what happened on their  
12 annual meeting in 2019 as I was no longer a member  
13 at that time, but as far as I know, in 2019, the  
14 membership fee remained the same. And whether the  
15 club -- whether the club's finances were in order  
16 or not, this is a contract that I signed with my  
17 application that they have not abided by.

18 THE COURT: Okay. Counsel, did you have any  
19 questions for Mr. Borer?

20 MR. HOLODAK: Judge, based upon his direct  
21 examination, I do not.

22 THE COURT: Okay. Mr. Borer, did you have any  
23 other witnesses that you wished to present or do  
24 you rest?

25 MR. STEVEN BORER: I rest, Your Honor.

1 THE COURT: All right. Mr. Holodak, do you  
2 wish to present your case?

3 MR. HOLODAK: Yes, ma'am. And, Judge, for the  
4 record, I'd go through the formality of making a  
5 motion for an involuntary dismissal of the case.  
6 Mr. Borer did not present evidence that he himself  
7 requested a refund of his fees or that the club  
8 refused such refund. So, for the record, I'll make  
9 that motion. And I'm prepared to proceed with my  
10 case.

11 THE COURT: I think he did indicate that there  
12 was a request for a refund.

13 MR. HOLODAK: Through his father.

14 THE COURT: Through his father.

15 MR. HOLODAK: His father didn't testify to  
16 that.

17 THE COURT: It was still a request for a  
18 refund.

19 MR. HOLODAK: Judge, I'd call Mr. Greg  
20 Gilhooly.

21 THE COURT: Okay.

22 MR. GILHOOLY: Your Honor.

23 THE COURT: Mr. Gilhooly, you have already  
24 been sworn in.

25 MR. GILHOOLY: I have been, Your Honor.

1 THE COURT: Okay.

2 DIRECT EXAMINATION

3 BY MR. HOLODAK:

4 Q Mr. Gilhooly, can you tell the court what your  
5 position with the club is currently?

6 A I'm currently the president of the Pompano  
7 Beach Flying Club.

8 Q And how long -- prior to becoming president,  
9 were you a member of the club?

10 A I was a member for approximately two years  
11 prior to me being elected to the board president.

12 Q Okay. The application that Mr. Borer  
13 introduced into evidence, I believe, as Exhibit No. 2,  
14 Plaintiff's Exhibit No. 2, are you familiar with that  
15 application, sir?

16 A I am familiar with that.

17 Q Okay. And as Mr. Borer pointed out, the  
18 application specifically says that the application  
19 process is subject to the bylaws of the club, correct?

20 A That is correct, sir.

21 MR. HOLODAK: And, Judge, I know the exhibit  
22 is Mr. Borer's. So I don't have the ability to  
23 scroll the screen. If Mr. Borer could be kind  
24 enough to put page 2 of his application up.

25 THE COURT: All right. Just as a -- I do want

1 to indicate that the operational rules, I'm  
2 entering that into evidence as Plaintiff's Exhibit  
3 3. I don't know if I said that for the record.

4 MR. HOLODAK: That's fine. And I have no  
5 objections, Your Honor.

6 THE COURT: All right. Very good.

7 (Plaintiff's Exhibit No. 3 was admitted into  
8 evidence.)

9 MR. STEVEN BORER: You said page 2 of my  
10 application?

11 MR. HOLODAK: Page 2 of the application,  
12 please.

13 MR. STEVEN BORER: Page 2.

14 BY MR. HOLODAK:

15 Q Now, Mr. Gilhooly, doesn't the application  
16 itself, right above Mr. Borer's signature, say that the  
17 application is -- agree to abide by the bylaws as they  
18 may be modified in the future?

19 A That's correct, it does, sir.

20 Q Now, Mr. Borer indicated when his father  
21 requested a refund of the \$1,700, that he was told the  
22 club -- in 2019, when he made the request, the club had  
23 no money. Is that an accurate statement of the club's  
24 finances in 2019?

25 A It's completely accurate, sir.



1 Q And under the bylaws, what is the obligation  
2 of the board of directors -- excuse me.

3 What is the obligation of the board of  
4 directors relative to determining how much money is  
5 going to be refunded to withdrawing members?

6 A So in January of each year, we have to  
7 evaluate the shares on what their evaluation is based on  
8 what our debt is and what our assets are, and we  
9 evaluate each share as to our value of the club.

10 Q And did the club take that step relative to  
11 the return of Mr. -- in this particular case,  
12 Mr. Borer's money?

13 A Sure, we did. On February, after a new board  
14 was elected, we did an audit to see what our evaluation  
15 was and we determined at the time that we were -- we had  
16 more debt than we had assets. So it was significant  
17 that we -- we evaluated our share at \$1, a significant  
18 value at \$1.

19 Q Now, relative to the relationship between the  
20 bylaws and the operational rules, in your opinion, as  
21 president of the club, which document controls the  
22 operations of the club?

23 A Sir, it's my understanding of Florida law that  
24 the bylaws -- I hate to use this word, but the bylaws  
25 trump all. The bylaws is the foundation of the

1 corporation.

2 Q And what are the operational rules of the  
3 club, just so the judge gets some understanding of what  
4 that document is?

5 A The operational rules are basically what we  
6 set for our standard day to day operation such as, fuel,  
7 plane up, mundane operational rules. It really doesn't  
8 trump the bylaws. The bylaws are our foundation. The  
9 operational rules are how we move forward to -- we have  
10 between 60 and 70 members at any given time -- how we  
11 move this in an orderly fashion to conduct our business.

12 Q And, again, just so the judge gets some  
13 understanding, what is it that this club actually does?

14 A Okay. So we have 70 members. We have six  
15 airplanes. We -- each member buys into a position.  
16 They're a corporate partner of our corporation and  
17 they're allowed to rent our planes at an hourly rate,  
18 pay a monthly due -- dues and enjoy a safe flying club.

19 Q And in order to be a member in good standing,  
20 a member not only has to pay the \$1,700, but also pay a  
21 monthly fee to the club --

22 A Correct.

23 Q -- correct?

24 A That's correct. There's a monthly fee and the  
25 member has other obligations to abide by our rules.

1 Q And those rules are the operational rules of  
2 the club as well as the bylaws?

3 A That's correct, sir.

4 Q Okay. And the operational rules are geared  
5 towards how you rent a plane, the charges you have to  
6 pay to rent the plane, when you're supposed to fuel the  
7 plane, return the plane, et cetera; is that correct?

8 A In short, it's the day to day operation of the  
9 club itself.

10 Q Now, the bylaws which --

11 MR. HOLODAK: And if the court indulges me for  
12 just a second so I can get the bylaws introduced  
13 into evidence, the bylaws of the club were attached  
14 and Bates stamped by my office filed with the clerk  
15 through the CMS system and sent to plaintiff on  
16 January 4th of 2021. I'm trying to pull those up,  
17 Judge, so we can see them.

18 Your Honor if you would give me the capability  
19 of sharing screen so I can share the bylaws on the  
20 screen for all to see.

21 THE COURT: You have the capability. I think  
22 that Mr. Borer needs to take his down for you to  
23 put yours up.

24 MR. HOLODAK: All right.

25 MR. STEVEN BORER: I just -- I just stopped

1 sharing my screen.

2 THE COURT: Okay. So you should be able to do  
3 that now.

4 And while you're doing that, what are the dues  
5 that -- the monthly dues that each member must pay?

6 MR. HOLODAK: Mr. Gilhooly, that's a question  
7 for you to answer.

8 THE WITNESS: Yeah, they're currently \$165 per  
9 month.

10 THE COURT: Okay.

11 MR. HOLODAK: I don't know if everybody can  
12 see.

13 THE COURT: Not yet.

14 MR. HOLODAK: Judge, on my screen it shows up  
15 as being shared. I don't know if it's showing up  
16 that way for everyone.

17 THE COURT: It does say that you have started  
18 sharing your screen, but the document is not  
19 appearing.

20 Here it is.

21 MR. HOLODAK: And, Judge, for the record, the  
22 documents were shared -- the bylaws, Judge, are  
23 Bates stamps 6 -- scroll down to the bottom of the  
24 bylaws so we can get them all for the court clerk.

25 Bates stamps 6 through 11, Your Honor, are the

1           bylaws for the corporation.

2   BY MR. HOLODAK:

3           Q     Mr. Gilhooly, are you familiar with the bylaws  
4   of the corporation?

5           A     I am, sir.

6           Q     And the copies that we submitted to the court  
7   and to Mr. Borer as pages 6 through 11, are those a true  
8   and accurate copy of the bylaws for the club?

9           A     Yes, they are, sir.

10           MR. HOLODAK: Your Honor, I'd move the bylaws  
11   into evidence as Defendant's Exhibit No. 1 or  
12   Composite Exhibit No. 1.

13           THE COURT: Mr. Borer, do you have any  
14   objection to that, to the bylaws coming into  
15   evidence as Defense Exhibit 1?

16           MR. STEVEN BORER: For the bylaws that were in  
17   effect during my tenure at the club, it was only 7  
18   pages, not 11. I'm not sure if there's --

19           MR. HOLODAK: Well, these start on page 5,  
20   Steve. So they are -- it says page 11 on --

21           MR. STEVEN BORER: Oh, I see.

22           Okay. I do not object.

23           THE COURT: Okay.

24           MR. HOLODAK: Thank you.

25           THE COURT: So the bylaws will be entered in

1 as Defense Exhibit 1.

2 (Defendant's Exhibit No. 1 was admitted into  
3 evidence.)

4 BY MR. HOLODAK:

5 Q Mr. Gilhooly, in the bylaws, the bylaws  
6 provide that a member must be a member in good standing  
7 at the time they resign to be qualified to any amount  
8 that the board determines is going to be refunded at  
9 that time; isn't that correct?

10 A That's correct, sir.

11 Q And what does it mean to be a member in good  
12 standing of the club?

13 A Well, you have to have all your dues and all  
14 your finances paid up. You have to submit a letter to  
15 the board requesting your resignation.

16 Q Okay. And then again the bylaws provide that  
17 the board would vote to determine how much, if anything,  
18 is going to be refunded to a withdrawing member,  
19 correct?

20 A That's correct. And it's based on the  
21 evaluation of the -- of the year. In January, the board  
22 is obligated to evaluate the shares. So it should be  
23 based on the evaluation of the club's finances at that  
24 time.

25 Q And consistent with the evaluation of the

1 club's finances, it's your testimony that the club voted  
2 to return how much money to members who withdrew in  
3 2019?

4 A It would be a -- we put a token share of \$1 up  
5 per share being that we had more debt than assets.

6 Q And having more debt than assets is consistent  
7 with the testimony from Mr. Borer that he was informed  
8 at the time he withdraw that the club had no money,  
9 correct?

10 A The club has been under water for several  
11 years prior to the new board taking over, yes, sir,  
12 that's correct.

13 Q And did the board reach that decision in its  
14 best business judgment?

15 A Yes, sir.

16 MR. HOLODAK: I have no other questions for  
17 Mr. Gilhooly, Your Honor.

18 THE COURT: Mr. Borer, did you have any  
19 questions for Mr. Gilhooly?

20 MR. STEVEN BORER: I do, Your Honor.

21 THE COURT: Okay. Go ahead.

22 CROSS-EXAMINATION

23 BY MR. STEVEN BORER:

24 Q Mr. Gilhooly, to your knowledge, in 2018,  
25 2019, and 2020, any of those three years, to the best of

1 your knowledge, did the club return any membership fees  
2 of \$1,700?

3 A There has been several members that have been  
4 refunded their \$1,700, yes.

5 Q Would you confirm in 2018 that membership fees  
6 were returned to members?

7 A In 2018, selected members were refunded their  
8 \$1,700 deposit. We're showing approximately 30 members  
9 right now that haven't been returned their deposit back  
10 from '17, '18, '19, and '20. However, I don't know  
11 rhyme or reason. Several members were returned their  
12 money and several members were denied their money.

13 MR. STEVEN BORER: Okay. Your Honor, I filed  
14 a motion to produce certain documents for trial on  
15 December 23rd and they are basically financial  
16 records that the club reports to -- to the members.  
17 I asked for 2018, 2019, and 2020 and I would like  
18 to see if -- if I can see the statements provided  
19 to club members on March 11th, 2020 specifically,  
20 if that's possible.

21 THE COURT: Counsel, do you have those  
22 documents?

23 MR. HOLODAK: We don't, Judge. Mr. Borer  
24 filed the motion. We never received a subpoena or  
25 a request to produce. He filed a motion with the



1 court. So I don't believe Mr. Gilhooly has  
2 documents with him --

3 THE WITNESS: No.

4 MR. HOLODAK: -- because none were formerly  
5 requested.

6 MR. STEVEN BORER: Your Honor, I object. I  
7 submitted that by hand to the court and e-mailed  
8 Mr. Holodak, as the rules say. And I believe you  
9 agreed to it in your motion on the 4th actually.

10 MR. HOLODAK: Judge, again, there was no  
11 subpoena or request to produce. Mr. Borer  
12 submitted a motion to the court. The motion was  
13 never set down for a hearing. There's been no  
14 subpoena or request to produce.

15 THE COURT: Are we talking about the  
16 December 23rd?

17 MR. HOLODAK: I'm not sure.

18 THE COURT: It's titled motion to produce at  
19 trial.

20 MR. HOLODAK: Yes, ma'am.

21 THE COURT: So why would that not be a request  
22 to produce, Counsel?

23 MR. HOLODAK: Judge, a request to produce has  
24 a 30-day window. If it's a request to produce, the  
25 time to respond hasn't been responded. If it was a

1 subpoena for trial, it wasn't in the proper format.  
2 And I don't know that Mr. Gilhooly has documents  
3 with him accordingly.

4 THE COURT: Does that mean that you don't have  
5 those documents or you just did not bring them with  
6 you or you just don't have them with you?

7 Did the --

8 MR. HOLODAK: Mr. Gilhooly, I don't believe,  
9 has the documents with him. Some of the documents  
10 that Mr. Borer requested, some documents exist,  
11 some documentation don't exist.

12 THE COURT: Okay. Do you have the documents  
13 regarding which individuals were refunded their  
14 monies and which individuals were denied?

15 THE WITNESS: Who's that question to?

16 THE COURT: I'm sorry?

17 THE WITNESS: Who's that question to, me or  
18 counsel?

19 MR. HOLODAK: To you, Greg.

20 THE COURT: Either one of you. If counsel is  
21 going to answer that, he's going to answer it on  
22 your behalf.

23 THE WITNESS: No, I --

24 THE COURT: But you may have more information.

25 THE WITNESS: (Inaudible.)

1 THE COURT: I'm sorry?

2 THE WITNESS: We're currently in litigation  
3 trying to obtain all the financial records from a  
4 prior board and we don't have that information  
5 available at this time.

6 THE COURT: It's not available because of  
7 what?

8 THE WITNESS: We're currently --

9 MR. HOLODAK: Judge, if I may explain, the  
10 club is currently in litigation in circuit court in  
11 Broward County against a Mr. Carl Kennedy, who is  
12 the prior treasurer of the club. It was a -- it  
13 was an accounting lawsuit that is ongoing.

14 When the treasurer, Mr. Kennedy left, the  
15 allegations in the circuit court complaint is that  
16 Mr. Kennedy did not turn over financial records of  
17 the club to the existing board members. So the  
18 documents that Mr. Borer requested are the subject  
19 of that ongoing litigation in front of Judge Haimen  
20 in circuit court.

21 So the club doesn't have those documents in  
22 its possession at this time. There is discovery  
23 and ongoing litigation up in circuit court to  
24 obtain those documents, and that case is still  
25 pending and still being litigated before Judge

1 Haines.

2 THE COURT: Did you attempt to request those  
3 documents prior to today's trial?

4 MR. HOLODAK: Judge, they are -- yes, ma'am.  
5 Those documents are subject to various requests to  
6 produce, various motions to compel. Again, it's  
7 all part of that ongoing litigation. That case has  
8 been going on for probably well over a year at this  
9 point in time.

10 MR. STEVEN BORER: Your Honor, I would just  
11 like to point out that on the 7th of January,  
12 Mr. Holodak did state in a defendant's response to  
13 plaintiff's request for production that he will  
14 produce those documents, so...

15 THE COURT: Is that correct?

16 MR. HOLODAK: Actually, Judge, what I said is  
17 we would treat those as a request to produce. And,  
18 accordingly, under the rules of small claims court,  
19 we then submitted a request to produce to  
20 Mr. Borer.

21 MR. STEVEN BORER: Which I responded to.

22 MR. HOLODAK: So we can't produce what we  
23 don't have. That's the subject of ongoing  
24 litigation. There's not much we can do at this  
25 point in time with that.

1 THE COURT: Do you have the club meeting  
2 minutes, especially the one where you indicate that  
3 you guys entered into a vote and decided to not  
4 return Mr. Borer's \$1,700? Do you have that?

5 MR. HOLODAK: Judge, we can produce that to  
6 the court. I don't think Mr. Gilhooly has it with  
7 him at this moment. That vote was taken in 2020,  
8 Your Honor. And Mr. Gilhooly has already testified  
9 as to the fact that that vote was taken.

10 THE COURT: Well, that's part of the request  
11 to produce and that's why I brought that up.

12 MR. HOLODAK: Greg, do you have those minutes  
13 with you?

14 THE WITNESS: I -- there are minutes  
15 available. I don't have them readily available,  
16 but there are minutes. It was probably March of  
17 2020 that we did take the evaluation and the  
18 minutes of the meeting.

19 We have been vigilant in obtaining all the  
20 minutes of the meeting. I don't have it available  
21 right this second.

22 THE COURT: Okay. What about the bank records  
23 for 2018 and 2019?

24 MR. HOLODAK: Those are all part of the  
25 litigation, Your Honor, that we are attempting

1 to -- before Judge Haines.

2 THE COURT: All right. Isn't that something  
3 you can get from the bank?

4 MR. HOLODAK: We have subpoenaed them, Judge.  
5 Again, the litigation is ongoing in front of Judge  
6 Haines.

7 THE COURT: You've subpoenaed them from the  
8 bank?

9 MR. HOLODAK: Yes, ma'am, we subpoenaed them  
10 from Mr. Kennedy and from the bank.

11 THE COURT: And the bank has not responded?

12 MR. HOLODAK: Not as of yet, Your Honor.

13 THE COURT: And when did you subpoena them?

14 MR. HOLODAK: Judge, off the top of my head, I  
15 don't know.

16 THE COURT: Okay. I would be interested in  
17 knowing, Counsel. And I think that it would be  
18 verbativ e on both ends. The testimony from  
19 Mr. Gilhooly was that some members received their  
20 refunds in 2018 and some members did not. I want  
21 to know what the criteria was, why we're select  
22 members given their refunds and select members not  
23 given their refunds. That's important for me to  
24 know and it's going to make a very big difference  
25 in what my ruling is going to be.

1 MR. HOLODAK: Understood.

2 THE COURT: So I want you guys to provide that  
3 information.

4 THE WITNESS: Okay.

5 MR. HOLODAK: Judge, I can inquire as to  
6 Mr. Gilhooly as to those exact questions just to  
7 clarify with the court.

8 THE COURT: Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. HOLODAK:

11 Q Mr. Gilhooly, were you on the board at the  
12 time in 2018 and 2019 when certain members were returned  
13 funds and certain members were not?

14 A No, I was not, sir.

15 Q And has the board received any of the minutes  
16 or decisions from the prior board as to why some members  
17 received monies and some members did not?

18 A Judge, there was never any minutes -- there  
19 was never any minutes that were passed on to the members  
20 and, no, there's no rhyme or reason why certain members  
21 received their payment and certain members did not  
22 receive their payment.

23 Q When you say --

24 A I cannot testify to why.

25 Q Greg, when you say there was no rhyme or

1 reason, there's no rhyme or reason that the current  
2 board can tell as opposed to what the prior boards'  
3 decisions were, correct?

4 A That's correct, certain members were given  
5 their money back and certain members were not given  
6 their money back.

7 Q And the documents that you're requesting and  
8 the information that you're trying to seek as to answer  
9 those questions, is that part of the ongoing litigation  
10 in the circuit court case against Mr. Kennedy in front  
11 of Judge Haimes?

12 A Yes, it's part of the litigation. And we were  
13 never turned over a record of what -- what members were  
14 paid and what members were not paid. And to be honest  
15 with you, I don't know why Mr. Borer's was not paid and  
16 yet other members prior to or after were paid. I can't  
17 answer that question. I was not a board member.

18 THE COURT: So there were members after  
19 Mr. Borer that were actually paid?

20 THE WITNESS: Yes, ma'am.

21 BY MR. HOLODAK:

22 Q And again, is that part of the ongoing  
23 litigation against Mr. Kennedy in the other case?

24 A That's correct, sir.

25 Q Based upon the records that the club does have



1 in its possession, was there a vote taken at any point  
2 in time by the board that the current board can tell as  
3 to the returns of monies to any members or whether or  
4 not the board voted to return some money, no money, or  
5 all money?

6 A If I understand your question correctly, sir,  
7 the prior board made a commitment that our values were  
8 at a dollar and any member would be paid back a dollar.  
9 But prior to this board taking effect, I can't answer  
10 that.

11 Q Well, my question was are there any notes in  
12 your possession or in the club's current possession that  
13 indicates that there was a board vote to return monies  
14 to anybody in the past?

15 A No, sir.

16 Q So based upon your evaluation of the current  
17 financial situation, what did the current board do in  
18 light of this situation -- financial situation of 2018,  
19 2019, and 2020 relative to returning money?

20 MR. STEVEN BORER: Your Honor, I object to  
21 that question. They changed the -- they changed  
22 the rules in 2020. I left in -- I joined in 2018  
23 and I left in 2018. The rules of 2019 and 2020 do  
24 not apply to me. It doesn't make sense. It just  
25 doesn't make sense.

1 THE COURT: I hear you, Mr. Borer, but I would  
2 like to hear the answer to that question. So I'm  
3 going to overrule your objection.

4 Go ahead, Counsel -- Mr. Gilhooly, go ahead  
5 and answer that question.

6 THE WITNESS: I'm sorry, Counsel, Ed, could  
7 you restate that question, please?

8 BY MR. HOLODAK:

9 Q Sure.

10 Based upon the current board's evaluation of  
11 the club's finances in 2018, 2019, and 2020, and based  
12 upon the financial records that you do have in your  
13 possession and the knowledge of the financial situation  
14 of the club, what did the current board do relative to  
15 returning funds to withdrawing members in 2018, 2019,  
16 and 2020?

17 A Well, it's a fiduciary responsibility that we  
18 have upon as board members. We had to evaluate the  
19 shares, basically how much -- how much debt and how much  
20 assets we have, and we determined that there was more  
21 debt than assets and we -- we put a dollar value on our  
22 share. So if anybody comes out, they would have a  
23 dollar.

24 And it's unfortunate -- Counselor, it's  
25 unfortunate that this -- this is what we inherited.

1 This is not what we imposed. This is what we inherited.  
2 And we imposed a dollar value to the share.

3 Q And is that consistent with the testimony from  
4 Mr. Borer that in 2018 and 2019 when he withdrew and  
5 requested his money back, he was told by the then  
6 treasurer that the club had no money?

7 A Sir, that's true. For the last couple years,  
8 this club has been under water and there's -- there's  
9 more debt than assets. And I can't repeat enough how  
10 unfortunate is for the other members that were in this  
11 situation, but the new board is trying to correct the  
12 situation.

13 THE COURT: Mr. Gilhooly, then how is it that  
14 you guys have paid other members if the club had no  
15 money?

16 THE WITNESS: No, ma'am, that's -- that's an  
17 incorrect statement. We didn't pay any members.  
18 We have not been able to pay a member --

19 THE COURT: You're now saying that nobody was  
20 refunded their monies?

21 THE WITNESS: Ma'am, under our -- under the  
22 new board, nobody has been paid.

23 THE COURT: I'm talking about in 2018 and  
24 2019.

25 THE WITNESS: Ma'am, that's --

1 THE COURT: That was what counsel specifically  
2 asked you.

3 THE WITNESS: Okay. That's beyond my scope.  
4 I was not -- I was not a board member there and I  
5 have no knowledge of who they paid or who they  
6 didn't pay.

7 THE COURT: You were not a board member in  
8 2018 and 2019?

9 THE WITNESS: No, ma'am. I became a board  
10 member February 2020.

11 THE COURT: And you became president when?

12 THE WITNESS: February 2020.

13 THE COURT: So you became a board member the  
14 same day that you became president?

15 THE WITNESS: That's correct, ma'am.

16 THE COURT: So you were not part of the board  
17 prior to that, you were just a member?

18 THE WITNESS: No, no, ma'am. And this is what  
19 we're alleging, that there was a bunch of  
20 misconduct prior to this and there was -- there was  
21 no financial responsibility prior to us taking over  
22 the board.

23 THE COURT: All right. The -- you've entered  
24 into evidence the bylaws. Are these the current  
25 bylaws? Were they modified after 2018?

1 MR. HOLODAK: No, ma'am, these are the same  
2 bylaws that were in effect at the time Mr. Borer  
3 joined the club and resigned from the club and are  
4 currently still in effect.

5 THE COURT: Okay. So the bylaws have not been  
6 modified at all?

7 MR. HOLODAK: No, ma'am.

8 THE COURT: Okay. Were the operating rules  
9 modified?

10 MR. HOLODAK: Mr. Gilhooly that's a question  
11 for you to answer.

12 THE WITNESS: Yeah, there has been a few  
13 changes to our bylaws. Nothing in regards -- there  
14 has been a few bylaws changes -- I'm sorry, some  
15 operating rules changes and I'm not completely  
16 aware of what they exactly were.

17 MR. HOLODAK: But none relative to the issue  
18 before the court today?

19 THE WITNESS: No.

20 THE COURT: Okay. Counsel, did you have any  
21 other questions of Mr. Gilhooly?

22 MR. HOLODAK: No, Your Honor.

23 THE COURT: Mr. Borer, did you have any other  
24 questions of Mr. Gilhooly?

25 MR. STEVEN BORER: Please give me just a

1 minute just to think about that real quick, if  
2 there's possible.

3 THE COURT: Sure, no problem.

4 If you wanted to confer with someone, I will  
5 give you that opportunity as well. I don't know if  
6 you have anyone who's helping you.

7 MR. STEVEN BORER: If I could speak to my  
8 father, that would be great, but that's --

9 THE COURT: The problem is that your father  
10 was a witness.

11 MR. STEVEN BORER: Okay. That's fine.

12 THE COURT: So that wouldn't be acceptable. I  
13 can't let you confer with your dad.

14 RECROSS EXAMINATION

15 BY MR. STEVEN BORER:

16 Q Mr. Gilhooly, when I joined the club, in the  
17 bylaws the -- I'm sorry. Hold on. Allow me to look at  
18 my documents.

19 So, Mr. Gilhooly, whenever I was in the club  
20 in 2018, to your knowledge, the club had only two  
21 aircraft, according to the attachment where -- I'm  
22 sorry, the operational rules, attachment A, states that  
23 there are two aircraft, correct?

24 A Incorrect.

25 Q In 2018?

1           A       Sir, I can't -- I can't testify to 2018.  When  
2   I became a member in 2019 -- in 2018, we had six air --  
3   or five aircraft at the time.  But to the best of my  
4   knowledge, we never had two aircraft in that club.

5           Q       Okay.  To this day, in 2020, as of today, is  
6   the club profitable?

7           A       Today's 2021, and we are showing a modest  
8   amount of profit.

9           Q       And even though the club has sustained all  
10  these financial burdens and owe multiple members \$1,700,  
11  rather than just pay the members over time in small  
12  amounts, you -- the club has hired a lawyer instead of  
13  paying out members even though they're financially  
14  unstable, but today they are, but in 2018, 2019, they  
15  were not, correct?

16          A       Sir, I never said we were financially stable  
17  in any way.  We're showing a modest skein.  There's a  
18  possibility of the club going into bankruptcy.  We're  
19  not financially out of the hole right now.  There's a  
20  very good possibility that this club could go into  
21  bankruptcy pending litigation and how it ends up.

22                   MR. STEVEN BORER:  Okay.  That is all, Your  
23                   Honor, that I have.

24                   THE COURT:  All right.  Counsel, based on his  
25                   questions, did you have any other questions?

1 MR. HOLODAK: No, Your Honor, I don't.

2 THE COURT: All right. Mr. Gilhooly, will you  
3 be able to provide the court with those minutes for  
4 the board hearing -- the board meeting where you --  
5 the board decided that they weren't providing  
6 anymore refunds?

7 MR. GILHOOLY: Your Honor, given a reasonable  
8 period of time, I'll reach out to our secretary and  
9 we could reach out for that meeting. It may take a  
10 day or two, but I will be able to produce that.

11 MR. HOLODAK: Judge, we'll produce them by the  
12 end of business on Wednesday if that's acceptable  
13 to the court.

14 THE COURT: That is acceptable.

15 MR. HOLODAK: We'll do a notice of filing,  
16 Your Honor, and upload them through CMS to your  
17 e-mail, Judge.

18 THE COURT: That would be great.

19 Now, do either of you have closing arguments  
20 that you would like to make, or both of you?

21 Mr. Borer, you would go first.

22 MR. STEVEN BORER: I'd just like to reiterate  
23 that I joined the club in April 2018. I withdrew  
24 the same year. So this supposed stock change of  
25 January 1st doesn't change whether the membership



1 fee is considered stock or not. I believe that the  
2 bylaws and the operating rules are two separate  
3 things and they must be treated as such.

4 The club can't just retroactively change the  
5 term of my contract because of their financial  
6 situation. My refundable membership fee just  
7 hasn't been returned even though I did the proper  
8 steps. And it also says within 30 days of me  
9 leaving the club.

10 So I ask the court to render a judgment in the  
11 amount of \$1,700 plus court costs for a total of  
12 \$2,100 to be paid within 30 days.

13 THE COURT: Where does it say 30 days at?  
14 Does it say that in the operating rules or does it  
15 say that in the bylaws?

16 MR. STEVEN BORER: I believe it says that --  
17 let me double check.

18 Your Honor, on the shared screen, withdrawal  
19 from membership, it states, "In the event a member  
20 wishes to withdraw from the corporation, he shall  
21 notify the corporation of such desire in writing.  
22 Within 30 days from the receipt of such  
23 notification, provided the member is in good  
24 standing in all respects, the corporation shall pay  
25 to the withdrawing member a sum as predetermined by

1 the board set annually as of January 1st of such  
2 stock. If the member is in arrears" --

3 THE COURT: Is that the bylaws?

4 MR. HOLODAK: The bylaws, Your Honor, not the  
5 operating rules.

6 MR. STEVEN BORER: The bylaws.

7 THE COURT: That's what I wanted to know.

8 MR. HOLODAK: Yes, ma'am.

9 THE COURT: Anything else, Mr. Borer?

10 MR. STEVEN BORER: That is all.

11 THE COURT: All right. Mr. Holodak.

12 MR. HOLODAK: Yes, Your Honor. I'll keep it  
13 brief.

14 I had submitted to the court a memorandum of  
15 law and the cases that I'm citing right now in the  
16 closing argument are cited in that memorandum of  
17 law.

18 Judge, this is Mr. Borer's case. He has the  
19 burden of proof to carry his cause of action. As  
20 he just stated, the bylaws simply state -- or  
21 correctly state, as well as his application, that  
22 the by -- that the application of every member are  
23 subject to the terms of the bylaws and those bylaws  
24 may be amended from time to time.

25 The Reynolds case says very specifically, from

1 the Third DCA, 1985, that the bylaws are the  
2 controlling documents of the corporation. Beyond  
3 the operational rules, beyond anything else, it's  
4 the bylaws.

5 The Allen case, from the Fourth DCA in 1993,  
6 says that when a member joins a club like this,  
7 there are no vested rights. Those vested rights  
8 are depending upon the bylaws and the operations of  
9 the board of directors of the club as they may be  
10 amended and as they occur from time to time. That  
11 is the language of the Fourth DCA.

12 The Wolfson case, also from the Fourth DCA  
13 that I cited in 1998, says that the board of  
14 directors has the ability to go and ratify all the  
15 actions of the prior board to ratify what needed to  
16 be done under the corporation bylaws.

17 Mr. Borer's case is dependent upon a few  
18 things. One, the board affirmatively voting to  
19 return \$1,700. And that is dependent upon him  
20 being a member of good standing.

21 Mr. Gilhooly testified that to be a member in  
22 good standing, you not only have to pay the \$1,700,  
23 but you have to pay your monthly fees to the club.  
24 There was no evidence whatsoever from Mr. Borer  
25 during his case that he submitted his monthly fees

1 to the club. Thus there's no evidence that he was  
2 a member in good standing, which is a condition  
3 precedent to getting any money back regardless of  
4 how much that is.

5 Mr. Gilhooly testified, consistent with the  
6 statement that was made to Mr. Borer in 2018 and  
7 2019 when he asked for his money back, that the  
8 club had no money. That is an affirmative  
9 statement from the club to him that there's not  
10 going to be a refund. You cannot give refunds if  
11 the club has no money.

12 This board came in in 2020, fulfilled its  
13 duties to go back and examine the financial status  
14 of this club in 2018, 2019, and 2020 and, as  
15 Mr. Gilhooly testified, made the affirmative vote  
16 that monies were not going to be returned. I  
17 believe he said a dollar was going to be returned  
18 to all withdrawing members.

19 It is an unfortunate situation that the club  
20 due to its prior board was financially run into the  
21 ground, but this current board is doing what it has  
22 to do under the law to make sure that in its best  
23 business judgment it is fulfilling its obligations  
24 not only to Mr. Borer, but to all members of the  
25 club and in doing so has voted to return a dollar

1 to all withdrawing members.

2 The case law is clear. Mr. Borer or the other  
3 members have no vested rights. Those rights are  
4 dependent upon the bylaws. The bylaws clearly  
5 state that you must be a member in good standing  
6 and that the board will vote to determine how much  
7 money is refunded.

8 Mr. Borer himself pointed out on his  
9 application that his application was subject to  
10 those votes. So, in a nutshell, Mr. Borer joined a  
11 club that was subject to the bylaws. The bylaws  
12 make the return of money subject to a board vote.  
13 This board voted to return \$1 to withdrawing  
14 members.

15 So, accordingly, Mr. Borer's not entitled to  
16 his \$1,700 and we would ask the court for an  
17 appropriate judgment accordingly.

18 Thank you, Your Honor.

19 THE COURT: Let me ask you this, Mr. Holodak.  
20 Did the board decide to give Mr. Borer \$1 back?

21 MR. HOLODAK: Judge, Mr. Gilhooly's testimony  
22 is the board decided to give \$1 to all withdrawing  
23 members. So I would have to stipulate at this  
24 point that based upon the testimony, Mr. Borer's  
25 entitled to \$1.

1 MR. STEVEN BORER: Your Honor, if I may --

2 THE COURT: Wait. Hold on. Hold on, sir.

3 Does that mean then that he is a member of  
4 good standing if he would get a dollar back?

5 MR. HOLODAK: Judge, the board voted to return  
6 all members of good standing, that are in good  
7 standing who withdrew \$1. They didn't vote  
8 specifically to give Mr. Borer \$1 back. The vote  
9 was that members in good standing who have  
10 withdrawn would be entitled to \$1.

11 Based upon the fact that Mr. Borer did not  
12 introduce any evidence that he paid his monthly  
13 dues throughout the course of his membership,  
14 there's no evidence that he was a member in good  
15 standing. Thus he did not meet the condition  
16 precedent and would not be entitled to his dollar.

17 THE COURT: All right. Mr. Borer, I'll give  
18 you the final word, the last word. Go ahead.

19 MR. STEVEN BORER: Your Honor, I would -- I  
20 would just like to once again reiterate that, yes,  
21 the club does change their stock and their bylaws  
22 on January 1st. If the membership buy-in fee and  
23 the stock are equal, according to the bylaws and  
24 Mr. Holodak and the operational rules, then the  
25 buy-in on January 1st, 2018 would be \$1,700.

1           If I left the same year -- and, right here,  
2   section 6, it says if the member's in arrears in  
3   payments or any charges or indebted, whether I was  
4   in good standing or not, that will be -- that  
5   amount that I'm in debt or I'm not in good standing  
6   will be deducted from that stock.

7           So if I left the same year, then the member --  
8   or the board of members -- board of directors would  
9   not have a chance to change that cost. It's the  
10  same. And the bylaws and operational rules and my  
11  application says I agreed to both. It is not just  
12  one or the other. And one does not trump the  
13  other. It doesn't say that anywhere in the bylaws.  
14  It doesn't say that in the rules, it doesn't. It's  
15  just on my application.

16          THE COURT: Okay. All right. I'm going to  
17  take this under advisement. I would like to read  
18  the operational rules as well as the bylaws and  
19  then I would like to look at the minutes once it is  
20  provided by Mr. Gilhooly on Wednesday or counsel on  
21  Wednesday.

22          So I will make a ruling after I receive all of  
23  those documents and I've had an opportunity to read  
24  everything as well. And I'll also look at your  
25  memorandum of law as well, Mr. Holodak.

1 MR. HOLODAK: Thank you, Your Honor.

2 MR. GILHOOLY: And, Judge, we'll do a notice  
3 of filing and submit those minutes to Mr. Borer at  
4 the same time we submit them to the court.

5 THE COURT: Very good. Thank you very much.

6 MR. HOLODAK: Thank you, Your Honor. Have a  
7 good day.

8 THE COURT: All right. All of you have a good  
9 day and stay safe out there.

10 MR. HOLODAK: Thank you, Judge. You as well.

11 MR. GILHOOLY: Thank you, Your Honor.

12 MR. STEVEN BORER: Thank you, Your Honor.

13 THE COURT: Okay. Bye-bye.

14 (The hearing concluded at 11:07 a.m.)  
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THE STATE OF FLORIDA, )  
COUNTY OF PALM BEACH. )

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Dated this 26th day of April, 2021.

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