

SUPREME COURT OF NEW JERSEY
DISTRICT IX ETHICS COMMITTEE

Testimony of Cathleen D. Szatmary

(District IX Ethics, Complainant,

VS

Kenneth F. Irek, Esq., Respondent,
testimony with exhibits, taken in
Middletown, NJ,
on Wednesday, July 29, 1992.)

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SUPREME COURT OF NEW JERSEY
DISTRICT IX ETHICS COMMITTEE
DOCKET NO. IX-91-4E

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DISTRICT IX ETHICS,
Complainant, TESTIMONY
-vs- OF
KENNETH F. IREK, ESQ.,
Respondent. CATHLEEN D. SZATMARY
x-----x

C O M P U T E R I Z E D T R A N S C R I P T
of the stenographic notes of the proceedings
in the above-entitled matter as taken by and
before KATHLEEN M. CASSIDY, CSR, a Certified
Shorthand Reporter and Notary Public of New
Jersey, in the office of GAUGHRAN & STEIB,
ESQS., 1275 Highway 35, Box 4150, Middletown,
NJ 07748, on Wednesday, July 29, 1992,
commencing at 10:15 in the forenoon.

A P P E A R A N C E S

Chairman:
RICHARD M. KEIL, ESQ.

The Presenter:
ROBERT J. GAUGHRAN, ESQ.

Panel Member:
JAMES H. MOODY, ESQ.

Public Member:
ROBERT M. FLANAGAN

I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

CATHLEEN D.

SZATMARY

By Mr. Gaughran 4

By Mr. Moody 18

EXHIBITS MARKED FOR IDENTIFICATION

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P-2	Check, front and back (copy)	5
P-3	Original Check	16
P-4	Affidavit of Publication	17

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MR. GAUGHRAN: For the record, if I may, Kenneth F. Irek, the Respondent, is not present and was served by Affidavit of Publication in this particular matter. My role as the Presenter in this case follows up my role as the initial investigator in this matter and part of the role of the investigator was attempting to contact Mr. Irek and we were not able to locate him but spent considerable time and effort doing so where we tracked down leads that he may be living in North Carolina, that we tracked down leads through the post office where we were informed through the Bar Association that he may be receiving some sort of governmental pension and we tracked that down through Social Security and the IRS, which was to no avail.

We then were told that he may be receiving some sort of military pension, so we followed through with correspondence and inquiries with the Navy, the Air Force, the Marine Corps, the Coast Guard and even through the Office of Personnel Management in Washington D.C.. , all of that proved to be dead ends, as well.

1 And, if the Chairman wishes, my
2 file will be available to you which shows the
3 litany of correspondence and attempts to locate
4 Mr. Irek before it was decided to serve him by
5 Publication.

6 MR. KEIL: I believe that
7 based upon what you've just presented to us --
8 told us which is what you did, you've done all
9 the usual matters one would do for an Affidavit
10 of diligent inquiry in a State matter or
11 matrimonial matter, that's all that's required.
12 Any comments?

13 MR. MOODY: No.

14 MR. GAUGHRAN: If I may,
15 I'd like to ask questions of Mrs. Szatmary,
16 whose already been sworn in.

17 MR. KEIL: Yes, please.

18
19 C A T H L E E N D . S Z A T M A R Y, Previously
20 Sworn.

21
22 DIRECT EXAMINATION BY MR. GAUGHRAN:

23
24 Q. I show you a photocopy of a
25 Contract for Sale of real estate dated May 23,

1 1990, we might want to mark --

2 MR. GAUGHRAN: Could we
3 mark this as an exhibit?

4 MR. KEIL: Yes.

5 MR. GAUGHRAN: We might as
6 well mark P-2, also, at the same time.

7 MR. MOODY: What's P-2?

8 MR. GAUGHRAN: P-2 is the
9 photocopy of a front and back of the May 29, 1990
10 \$5,000 dollar check.

11 (Whereupon a copy of the
12 Contract for Sale dated 5/23/90 was received and
13 marked P-1 for identification.)

14 (Whereupon a copy of a
15 check, front and back, was received and marked
16 P-2 for identification.)

17 BY MR. GAUGHRAN:

18 Q. I ask you to identify for this
19 Panel the Exhibit P-1.

20 A. Uh-huh.

21 Q. Would you please tell the Panel
22 what this is.

23 A. That's the contract that we signed.

24 Q. The contract you signed?

25 A. To buy a lot.

1 Q. To buy a lot. And P-2, would
2 you describe that for the Panel, also.

3 A. Right. That's a check that we had sent
4 him for the deposit of land.

5 Q. Okay. Could you please describe
6 the circumstances that led up to you signing the
7 contract for the sale of real estate.

8 A. Well, we were looking for a lot in
9 Jackson. We initially had another one and then
10 we seen this one in the paper, it was a lot
11 cheaper. So, we contacted the ad in the paper
12 and spoke to Ken Irek and -- well, I spoke to
13 Ken Irek and then he told me where it was, to
14 go look at it.

15 Then he had a woman that represented
16 him, Fran Donahue (phonetic), that showed us
17 the houses in there and then showed us the lots.

18 Q. Now, after you spoke to Ken Irek
19 and saw the lot, did you retain legal counsel to
20 represent you in connection with this purchase?

21 A. Right.

22 Q. And who represented you?

23 A. Dennis Poane, Esq.

24 Q. And his office is in?

25 A. Well, it was in Lakewood at the time.

1 He's moved to Wall.

2 Q. Okay.

3 MR. KEIL: For the record,
4 he used to be with Steinberg, Steele and Poane
5 and now he's with Ed Donini, Mike Donini.

6 THE WITNESS: Right.

7 BY MR. GAUGHRAN:

8 Q. So, you and your husband decided
9 that you're serious about purchasing this lot --

10 A. Uh-huh.

11 Q. -- and you retained Mr. Poane to
12 represent you.

13 A. Right.

14 Q. What happened next in this
15 transaction?

16 A. Well, then he got in touch with, I guess,
17 Fran Donahue because then -- Dennis I believe
18 got in touch with Fran Donahue because then they
19 wrote up a contract and sent it to Dennis'
20 office, which we signed -- well, we didn't sign
21 it initially, there were some changes first.

22 Q. So, were any changes -- there
23 were changes to be negotiated on the real
24 estate contract.

25 A. Right.

1 Q. Okay. Who negotiated those
2 changes?

3 A. Well, Dennis felt on our behalf that
4 some of those changes should be made.

5 Q. So, your attorney, Mr. Poane,
6 Dennis Poane, negotiated those changes in the
7 real estate contract with whom?

8 A. Well, that he sent it back, um -- I think
9 either Fran picked it up or he mailed it, I'm not
10 really sure which.

11 Q. Did he have any negotiation with
12 Kenneth Irek?

13 A. He spoke -- did he? I don't know if he
14 spoke to him or not. I think he -- I'm not sure
15 if he spoke to him or not. He might have spoke
16 to him once or twice, I'm not really sure, but
17 he mostly, I think, dealt with Fran --

18 Q. Okay.

19 A. -- Donahue.

20 Q. Now, the contract on page one is
21 dated May 23 but I see the date of May 29, 1990
22 next to your signatures.

23 A. Right. Because we were waiting for it
24 to come back from Fran Donahue. That was the
25 initial contract, and then we didn't sign it

1 until he accepted the changes.

2 Q. Until the changes that your
3 attorney wanted?

4 A. Right.

5 Q. Okay. So, the contract is dated
6 May 29, 1990. I show you exhibit P-2 again,
7 which is the \$5,000 dollar deposit check and ask
8 you what's the date on that check.

9 A. 5/29.

10 Q. So, did you prepare the check at
11 the same time that you signed the contract?

12 A. Right.

13 Q. Now, the check is made payable to
14 Kirex Development Co..

15 A. Right.

16 Q. Is there any reason why the check
17 was made payable to Kirex Development Co.?

18 A. Well, that was the development that we
19 were buying from. You know, that was his
20 development.

21 Q. "His development," meaning
22 Mr. Irek's?

23 A. Right.

24 Q. Okay.

25 A. And I had questioned Dennis about that,

1 I was like: How come we don't -- because we
2 bought houses before and because we've sold two
3 houses and knew we were buying this land to build
4 and I said: How come it's not made out to, you
5 know, a lawyer in trust, because that's usually
6 how we did it, and he informed me that Ken Irek
7 was a lawyer acting on his own behalf through
8 Kirex Development so that there would not be a
9 problem. He wouldn't see any reason why we
10 shouldn't fill it out that way.

11 Q. All right. So, your lawyer
12 advised you that it was okay to have the check
13 payable to the developmental company because
14 representations were made to your lawyer by
15 Mr. Irek?

16 A. That he was acting on his own behalf as
17 a lawyer.

18 Q. Now, Kirex Development signs the
19 contract on June 6th, 1990. What happens next?

20 A. Well, we were still waiting for some
21 papers. Even though we signed a contract,
22 Dennis wanted him to still get that Equa
23 (phonetic), or whatever, paper signed and he
24 wanted -- I'm trying to think of what else,
25 Equa --

1 MR. KEIL: Oh, there's the
2 original check.

3 THE WITNESS: Yes.

4 A. And he wanted the judgments to be cleared
5 up or else to state that they would be paid for
6 at closing and the tax lien that he had against
7 his property. He wanted those matters to be
8 taken, you know, care of.

9 Q. So, what you're saying is: That
10 when your lawyer did the title work, he found
11 out that there were liens and judgments against
12 Mr. Irek?

13 A. Right. Correct.

14 Q. Do you know if those liens and
15 judgments against Mr. Irek would have exceeded
16 the total purchase price of the lot?

17 A. The liens and the judgments that he knew
18 of, at the time, would not have -- the guy still
19 would have -- Ken Irek would have still come out
20 with some money.

21 Q. Okay.

22 A. Not much, but he still would have come out
23 with some money.

24 Q. Okay.

25 A. A very small amount.

1 Q. Now, the contract was signed by you
2 the 29th of May, the check was signed by you the
3 29th of May, the judgments are coming back, the
4 title work comes back I would assume sometime in
5 June, mid to late June.

6 A. That might even have been July. I'd have
7 to see. Which was July 10th, I guess. Well, he
8 wrote to Mr. Irek: Enclosed please find copy of
9 a notice from the Jackson Township Tax Collector
10 advising the amount necessary to pay off the tax
11 lien. That was one. The title search was June
12 26th because he wrote to Ken Irek: Enclosed
13 please find title search. Please note tax lien
14 and mortgage. In accordance with your
15 instruction, this tax lien will be paid from
16 the proceeds at closing.

17 So, I imagine Mr. Irek informed Dennis
18 that the tax lien would be paid at the closing.

19 Q. Now, after that series of
20 correspondence back and forth in the end of
21 June and early July, what happened next?

22 A. Well, basically kind of waited and then
23 we weren't hearing from him -- okay. There's
24 one dated July 31st from Dennis to Mr. Irek
25 and he says: As you remember from my letter

1 of June 26th, 1990, we need certain items prior
2 to closing in order to convey title in accordance
3 with the contract entered into between you, my
4 clients, Mr. and Mrs. Szatmary. As yet, we have
5 not received confirmation of the availability
6 to obtain partial release from Midlantic National
7 Bank merchants or current mortgage holder or the
8 Affidavit regarding Equa or evidence by file
9 documents of the listing of satisfaction
10 of the judgment by Sherwin-Williams Company.
11 These matters are in addition to the payment
12 of the tax lien from the sale of proceeds.
13 Until these matters are taken care of, title
14 will not be sufficient to satisfy the contract
15 requirements of our title company.

16 And he even states here, um: As you
17 know, both sides have been cooperative and
18 moving towards closing and we want to continue
19 to do so. However, we would appreciate hearing
20 from you at your earliest convenience but no
21 later than August 6th, 1990 with regard to the
22 above and a proposal for a closing date.

23 Q. Now, was your attorney attempting
24 to contact Mr. Irek by telephone?

25 A. Telephone, letters, even those certified

1 letters. A lot of them seemed to come back void
2 except maybe a few occasional times from Fran
3 Donahue and she'd say: Well -- like at one
4 point where we were getting kind of anxious,
5 we contacted her and then she said he was in
6 North Carolina, so he didn't receive his mail
7 until later but she had spoken to him and that
8 he still did want to close, you know, that she
9 would get back in touch with us as far as the
10 closing. Then we didn't hear anything for
11 awhile again, so Dennis signed it, the essence
12 of time -- time of essence letter and, you know,
13 then we were just -- we even went there on the
14 day of closing, the set date of closing to his
15 office and waited around and, of course, he
16 didn't show. And then we frantically tried
17 calling numbers again and we were getting Fast
18 Frame, which is a new number that he had that
19 we had gotten from Fran, she said that's how he
20 got in touch. We left numerous messages with
21 them to call Fran, she said she didn't know his
22 whereabouts any more and, you know, that she
23 wasn't involved, you know, and she wasn't acting
24 on his behalf but she was just helping him out
25 as a friend. So, um, we kind of got, you know --

1 kind of bumped out because we couldn't get a hold
2 of him and we knew that that was it, we knew we
3 had lost, you know, everything at that point.

4 Q. So, you never closed on the lot?

5 A. No.

6 Q. And the \$5,000 dollar deposit has
7 never been recovered.

8 A. No. And there have been numerous
9 attempts on Dennis Poane's part, even to the
10 extent -- you know, our lawyer, even to the
11 extent where he went to the house that Ken
12 Irek lived in on Carriage Lane, I believe it
13 was. He went -- he had two offices supposedly,
14 he went to those, they were closed down. Um,
15 you know, and he even left, you know, things
16 at his door, you know, a package of stuff at
17 his door with the time of essence and
18 everything. That was all.

19 MR. GAUGHRAN: Could we go
20 off the record for a second, please.

21 MR. KEIL: Yes.

22 (Whereupon an off-the-record
23 discussion was held.)

24 MR. GAUGHRAN: The original
25 check.

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MR. KEIL: Let's mark it P-3.

(Whereupon the original check was received and marked P-3 for identification.)

BY MR. GAUGHRAN:

Q. Mrs. Szatmary, I show you exhibit P-3 and ask you to identify that, please.

A. That's the check that we sent to Ken Irek for the deposit of the land, the original check.

Q. Okay.

MR. GAUGHRAN: I have no further questions. If you want to --

MR. KEIL: I have some questions.

P-1, paragraph five of the contract states: Deposit monies, all deposit monies will be held in trust by Kirex Development Co. located at Colts Neck, NJ until closing. The time you gave -- at the time you handed over that check, you understood then that it was the same as being -- that it was being held by an attorney.

THE WITNESS: Correct.

Because that's what I questioned, that. Because we had a misdealing with an attorney one time Justin Ann Connors. We didn't lose anything,

17
1 we did not lose anything out of that but we were
2 in the process of buying our house when we had
3 dealings with -- or selling our house when we
4 had dealings with him and that was like hairy in
5 itself and that's when we had William Smith take
6 over for us and then we just found Dennis later
7 for our other things. So, that's why I was more
8 cautious than I would have been normally in
9 saying: Why isn't there an attorney, you know,
10 dealing with this and he said, you know: He is
11 an attorney, you know.

12 MR. KEIL: Okay.

13 MR. MOODY: Can I see the
14 contract?

15 MR. KEIL: Oh, yes.

16 THE WITNESS: We have not
17 had our luck with lawyers until Dennis came
18 along.

19 MR. KEIL: P-4, Affidavit
20 of Publication.

21 (Whereupon a copy of
22 the Affidavit of Publication was received and
23 marked P-4 for identification.)
24
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1 CROSS EXAMINATION BY MR. MOODY:
2

3 Q. With regard to the contract
4 that's been marked P -- I believe P-1 for
5 identification, is that the actual contract
6 that you were originally provided with and
7 on which your attorney made certain changes?

8 A. Correct.

9 Q. Did you receive any type of
10 correspondence from your attorney indicating
11 any discussions he had with Ken Irek regarding
12 changes to be made in the contract before this
13 one was actually executed?

14 A. I don't know. I have a lot of different
15 letters here, that he gave me copies of, which
16 I don't know exactly if there is any -- I mean,
17 he's -- you mean as far as verbally speaking to
18 him or just letters?

19 Q. Yes, if they spoke on the phone,
20 if there was any clarification of the terms of
21 the contract or any changes to be made in the
22 contract before you and your husband signed it.

23 A. I'm almost positive that he spoke to him
24 at least once because he had told us that.

25 Q. Okay. Do you know whether there

1 was a discussion, a verbal discussion, between
2 your attorney and Mr. Irek with regard to that
3 question that you raised on the deposit being
4 held in escrow or being --

5 A. That, I'm not aware of.

6 Q. -- held by the firm until such
7 time as the closing?

8 A. That, I'm not aware of.

9 Q. In the contract it also seems
10 to make reference to the fact that if the
11 contract did not go forward, that you would
12 be entitled to be reimbursed for title expenses
13 or survey expenses. Did you incur any other
14 expenses besides the loss of the \$5,000 dollar
15 deposit?

16 A. Numerous expenses.

17 MR. MOODY: I don't know
18 if we get into any of that at all or we need
19 to for purposes of any --

20 MR. KEIL: I don't think so.

21 MR. MOODY: -- application
22 she should make in the future.

23 A. I already made an application to the
24 Client Security Funds.

25 Q. Okay.

1 A. And I listed all of that.

2 Q. Okay. You mentioned the name of
3 a woman, Fran Donahue, that you apparently had
4 some conversations with. Was it represented to
5 you that Fran Donahue was employed by the -- is
6 it Kirek (phonetic)?

7 MR. GAUGHRAN: Kirex.

8 BY MR. MOODY:

9 Q. Kirex Development Co.?

10 A. Well, she kept on stating that she wasn't
11 acting as the real estate but she was acting as
12 a friend on his behalf and doing it. Whether she
13 was paid or not, I'm not really sure about that,
14 but I imagine she would have been with all those
15 houses he was selling in there. But they did
16 have real estate signs in the lot, you know, in
17 the area, you know, there was a real estate
18 agent. But she kept on saying to us -- now I
19 don't know why she was doing that but she kept
20 on saying: I'm not acting as a real estate,
21 I'm acting as a, you know, on his behalf as a
22 friend, you know.

23 Q. Okay. When you went to look at
24 the lot -- and I know you told us that Fran was
25 the one that showed you the lot, did you go to

1 an office or this company where you met her and
2 she took you over to the lot?

3 A. In one of the houses --

4 Q. One of the houses.

5 A. -- that was still vacant.

6 Q. Okay. The contract, itself,
7 apparently is signed by Kenneth Irek, president,
8 and attested to by him, as well. Did you
9 question that at all as far as his execution
10 of the contract on behalf of Kirex Development
11 Company or were you told that he was not only
12 the president and the secretary but he was the
13 owner of this particular business?

14 A. Right. We just took it for granted
15 being that he owned all this, you know, in
16 business, that was what he was, you know.

17 Q. Did you ever have any discussions
18 with your attorney as to these liens and
19 judgments which were referred to? I think
20 there was -- at one point you talked about a
21 letter in which there was a discussion about
22 Equa, a judgment, a tax lien and a partial
23 release, I guess, from -- that was to be
24 obtained from Midlantic National Bank. Were
25 those liens, to your knowledge, against Ken

1 Irek or were they against the business?

2 A. The business. Kirex Development.

3 Q. And Ken Irek, as far as you
4 know, represented to your attorney that he
5 would be responsible for releasing the liens
6 against the business?

7 A. At closing.

8 Q. Okay.

9 MR. MOODY: Thank you.

10 MR. KEIL: Mrs. Szatmary,
11 do you, by any chance, have a title search with
12 you?

13 THE WITNESS: Um, I can
14 look. What would it look like?

15 MR. KEIL: Why don't I just
16 look through there for you.

17 MR. MOODY: One other
18 question I forgot.

19 BY MR. MOODY:

20 Q. You were talking about trying
21 to reach Ken Irek or Fran or someone when you
22 started to become a little concerned as to
23 whether this was going to close. Did you ever
24 speak to Ken Irek directly?

25 A. Not after that, not after the -- I only

1 initially spoke to him once in reference to the
2 paper.

3 Q. And that was to the ad?

4 A. I believe so.

5 Q. After that, did you ever speak to
6 him?

7 A. No, I didn't. I believe Dennis did,
8 though.

9 Q. How about your husband, to your
10 knowledge, did he ever speak to him?

11 A. No.

12 Q. Did you ever meet him?

13 A. No.

14 Q. You never --

15 A. I don't know what the man even looks
16 like.

17 Q. Okay.

18 MR. KEIL: No.

19 MR. GAUGHRAN: I have no
20 further questions.

21 MR. KEIL: I have no further
22 questions.

23 MR. FLANAGAN: None.

24 MR. MOODY: No questions.

25 MR. GAUGHRAN: Just as a

1 very brief summary, I respectfully submit that
2 although the Respondent is not here he has, at
3 the very least, violated two of the rules of
4 professional conduct, 1.15 (b) as it relates
5 to his obligation to safekeep property and that
6 he did not return to the grievant the funds
7 that they are entitled to.

8 And, secondly, I also submit
9 that RPC 8.4 (c) has been violated in that
10 the Respondent engaged in conduct that's either
11 dishonest, fraudulent, along with potential
12 misrepresentations to the grievant.

13 MR. KEIL: Thank you.

14 MR. GAUGHRAN: Thank you.

15 MR. MOODY: Thank you.

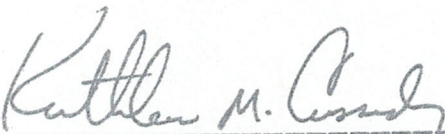
16 MR. KEIL: The matter is
17 now closed.

18 (Whereupon the Ethics
19 Hearing was closed.)
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CERTIFICATE

I, KATHLEEN M. CASSIDY, CSR, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate Computerized Transcript of the Testimony of CATHLEEN D. SZATMARY, who was first duly sworn by me.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the Testimony was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.


KATHLEEN M. CASSIDY, CSR

Dated: August 12, 1992
My Commission Expires on:
July 23, 1994
License No. XI00783

SUPREME COURT OF NEW JERSEY
DISTRICT IX ETHICS COMMITTEE
DOCKET NO. IX-91-4E.

X-----X
DISTRICT IX ETHICS COMMITTEE,
Complainant, TESTIMONY

-vs- OF
KENNETH F. IREK, ESQ., CATHLEEN D. SZATMARY
Respondent.

X-----X

TESTIMONY OF:
CATHLEEN D. SZATMARY
3 Ware Place
Middletown, NJ 07748

DATE: Wednesday, July 29, 1992

AT: GAUGHRAN & STEIB, ESQS.,
1275 Highway 35, Box 4150
Middletown, NJ 07748

STATE SHORTHAND REPORTING SERVICE
212 Monmouth Road
Oakhurst, NJ 07755
BY: KATHLEEN M. CASSIDY, CSR

ORIGINAL SENT TO:
WALTON KINGSBERY, ESQ.,
c/o Ethics Committee
34 Broad Street
Red Bank, NJ 07701