

SUPREME COURT OF NEW JERSEY
DISTRICT IX ETHICS COMMITTEE

Hearing Panel Report Recommending
Public Discipline

(Hearing Panel Report
Recommending Public Discipline,
with attachments,
presented and signed by
Richard M. Keil, Esq., Chair,
August 5, 1992)

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SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. IX-91-4E

OFFICE OF ATTORNEY ETHICS,

Complainant,

v.

KENNETH IREK,

Respondent.

HEARING PANEL REPORT
RECOMMENDING PUBLIC
DISCIPLINE

TO THE HONORABLE CHAIR AND MEMBERS OF THE DISCIPLINARY
REVIEW BOARD:

The District IX Ethics Committee Hearing Panel
respectfully shows:

I. PROCEDURAL HISTORY

1. Respondent, KENNETH F. IREK, EQ., was admitted to the Bar of this State in 1981, and his last known office where he was engaged in the practice of law was 41 Highway # 34, P.O. Box 161, Colts Neck, New Jersey, 07722.

2. A formal complaint was filed with the District IX Ethics Committee and attempts were made to serve the respondent by ordinary and certified mail. Service was finally made by publication in the Asbury Park Press on two dates, June 19 and June 21, 1992. (Exhibit P-4).

3. Respondent did not file an Answer nor did he appear at the hearing.

4. A formal hearing was held before this Panel consisting of Richard M. Keil, Esq., Chair; James Moody, Esq., and Robert Flanagan, public member, on the foregoing charges on July 29, 1992. The complaint was prosecuted by Robert Gaughran, Esq. The prosecutor's exhibits marked P-1 through P-4 were received in evidence and are submitted herewith.

II SYNOPSIS OF ALLEGATIONS

5. The formal complaint charged the respondent with the following allegations of unethical conduct:

The respondent, KENNETH IREK, on behalf of Kirex Development Company and as the attorney for Irex Development Company, of which he was the President, negotiated a real estate contract with the Grievants. He engaged in conduct which constituted dishonesty, fraud, deceit and misrepresentation by failing to safeguard the \$5,000.00 deposit, which was to have been held in the trust account of his development company, and by misappropriating the deposit belonging to the Grievants.

III FINDINGS OF FACT AND CONCLUSIONS

6. Marked in evidence as P-1 was the contract for sale of real estate dated May 23, 1990, P-2 a photocopy of the grievants' \$5,000.00 check, front and back, dated May 29, 1990, and P-3 the original check itself.

7. During the last week of May 1990 the grievants entered into a contract for the purchase of a construction lot in Jackson, New Jersey, from the respondent's company, Kirex Development Company. On May 29, 1990 the grievants gave a \$5,000.00 check payable to Kirex Development Company to the respondent's agent. The check was endorsed in ink, Kirex Development Co. As the grievants had previously purchased real property on two occasions, they inquired of their attorney why the money was not being deposited into an attorney's trust account. They were advised that Kirex Development Company was owned by an attorney. The contract specifically stated that all deposit monies would be held in trust by Kirex Development Co. until closing. The contract was signed by "Kirex Development Co. Inc. by Kenneth Irek, President, attest: Kenneth Irek, Secretary."

8. The grievants proceeded through their attorney in doing all necessary preparatory work in anticipation of the closing on the building lot, including ordering all title

work. After entering into the contract the respondent disappeared, his company Kirex Development Company never fulfilled its obligations under the contract, and the grievants have demanded repeatedly the return of the \$5,000.00 deposit, which has never been returned by the respondent or his company.

9. The panel finds that the grievants testimony was credible in every detail. The panel finds respondent guilty of Count One in that he received money in a fiduciary capacity with the money placed in trust and failed to safeguard it and return it. Count Two is dismissed as there was no testimony elicited with regard to it. In this instance it would require testimony from the respondent to prove it and he failed to answer the complaint or appear. The panel finds defendant guilty of Count Three, a violation of R.P.C. 8.4 (c) because he accepted the money, misrepresented that it would be placed in trust and held until closing and he then absconded with the funds. His actions constituted misrepresentation, deceit, dishonesty and fraud upon Mr. and Mrs. Szatmary.

IV DETERMINATION

10. The Committee has carefully considered and carefully reviewed the testimony and evidence and has concluded that the respondent's conduct was clearly unethical in violation of R.P.C. 1.15(b), and R.P.C. 8.4(c) for the reasons set forth above.

11. As a result, the panel recommends public discipline.

Dated:

8/5/72

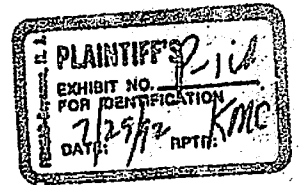
DISTRICT IX ETHICS COMMITTEE

By

Richard M. Keil

RICHARD M. KEIL, ESQ.

Chair



CONTRACT FOR SALE OF REAL ESTATE

THIS CONTRACT for Sale is made on May 23, 1990.

BETWEEN Kirex Development Co.
whose address is 41 Highway 34, Colts Neck, N.J. 07722
referred to as Seller; P.O. Box 161

AND ^{ZONTAN} George and ^{KD} CATHLEEN Szatmari (H&W) of Morganville, N.J.
referred to as Buyer. ^{KD}

The words "Buyer" and "Seller" include all Buyers and Sellers listed above.

1. PURCHASE AGREEMENT: The Seller agrees to sell and the Buyer agrees to buy the property described in this contract.
2. PURCHASE PRICE: The purchase price is \$35,000.00
3. PROPERTY: The property to be sold consists of: (a) land and all the buildings, other improvements and fixtures on the land; (b) all the Seller's rights relating to the land; and (c) all personal property specifically included in this contract.

The real property to be sold is a building lot in the Township of Jackson County of Ocean, and State of New Jersey. It is shown on the municipal map as Lot (s) 22.21 in Block 85.

4. PAYMENT OF PURCHASE PRICE: the Buyer will pay the purchase price as follows:

To be paid by Buyer (initial deposit) at signing of contract by or before June 1, 1990	\$ 5,000.00
Additional deposit within NA days of the execution of this Contract by all parties.	\$ -0-
Balance to be paid at closing of title, in cash or by certified or bank cashier's check.	\$ 30,000.00

By the Seller taking back a note and mortgage for _____ years at _____ % interest with monthly payments based on a _____ year payment schedule. The Buyer will prepare the necessary documents at his own cost and expense. The Buyer will also pay all recording costs and provide the Seller with an adequate affidavit of title.

\$ 35,000.00

5. DEPOSIT MONIES: All deposit monies will be held in trust by Kirex located at Colts Neck, N.J. until Closing Development Co.

6. TIME AND PLACE OF CLOSING. The closing date cannot be made final at this time. The Buyer and Seller agree to make June 15, 1990, the estimated date for closing. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will be held at the offices of STEINBERG, STEELE & POANE @ 1121 MADISON AVE, LAKEWOOD, NJ

7. TRANSFER OF OWNERSHIP: At the closing the Seller will transfer ownership of the property to the Buyer. The Seller will give the Buyer a properly executed Deed and an adequate affidavit of title. If the Seller is a corporation, it will also deliver a corporate resolution authorizing the same.
8. TYPE OF DEED: A Deed is a written document used to transfer ownership of property. In this sale the Seller agrees to provide and the Buyer agrees to accept a Deed known as a Bargain & Sale with Covenants vs. Grantor's Act.
9. THE PREMISES: The premises consists of vacant land containing 95.02 feet of frontage on 1.13 Acres by a depth of 400.11/406.4 feet.
10. FLOOD AREA: The federal and state governments have designated certain areas as "flood areas". This means they are more likely to have floods than other areas. If this property is in a "flood area" the Buyer may cancel this contract within 30 days of the signing of this contract by all parties.
11. BUILDING AND ZONING LAWS: The Buyer intends to use the property for construction of a single family home. The Seller states that this use does not violate any applicable zoning ordinances, building code or other law.
12. PROPERTY LINE: The Seller states that all buildings, driveways and other improvements on adjoining properties do not extend across the boundary lines of the property.
13. CANCELLATION OF CONTRACT: If this contract is cancelled, the Buyer can get back the deposit and the parties will be free of liability to each other. However, if the contract is cancelled in accordance with paragraph 11 or 12 of this contract, the Seller will pay the Buyer for all title and survey and engineering costs.
14. ASSESSMENTS FOR MUNICIPAL IMPROVEMENTS: Certain municipal improvements such as sidewalks and sewers may result in the municipality charging property owners to pay for the improvements. All unpaid charges (assessments) against the property for work completed before the closing will be paid by the Seller at or before the closing. If the improvement is not completed before the closing, then only the Buyer will be responsible. If the improvement is completed, but the amount of the charge (assessment) is not determined, the Seller will pay any deficiency to the Buyer (if the estimate proves to have been too low) or the Buyer will return any excess to the Seller (if the estimate proves to have been too high).
15. ADJUSTMENTS AT CLOSING: The Buyer and Seller agree to adjust the following expenses as of the closing date: sewer charges, taxes, and other like charges.
16. POSSESSION: At the closing the Buyer will be given possession of the property. No tenant will have any right to the property unless otherwise agreed in this contract.
17. MARKETABLE TITLE: Title to be conveyed shall be marketable of record and insurable at regular rates by any reputable title insurance company chosen by Buyer and authorized to do business in the State of New Jersey. *all liens will be paid off on or with closing funds*
18. RIGHT OF ENTRY: From and after the date of this agreement Buyer shall have the right to enter upon the premises for the purpose of preparing a survey and completing all tests and inspections permitted by this Contract. *Buyer's agents shall also have the right to enter the premises*

19. COMPLETE AGREEMENT: This contract is the entire and only agreement between the Buyer and Seller. This Contract replaces and cancels any previous agreements between the Buyer and Seller. This contract can only be changed by an agreement in writing signed by both the Buyer and Seller. The Seller states that the Seller has not made any other contract to sell the property to anyone else. The Seller's agreement to pay the Broker (if any) is contained below.

20. PARTIES LIABLE: This contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

21. NOTICES: All notices under this contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this contract, or to the party's attorney.

22. Seller represents the premises are free from and never has been used for the deposit of hazardous waste. *Seller will sign an affidavit that the property, to his knowledge, has only been undeveloped woods.*

23. ADDITIONAL CONTRACTUAL AGREEMENTS:

This contract is subject to Clear Perc & Bore Tests

Seller agrees to clear property of all debris before closing.

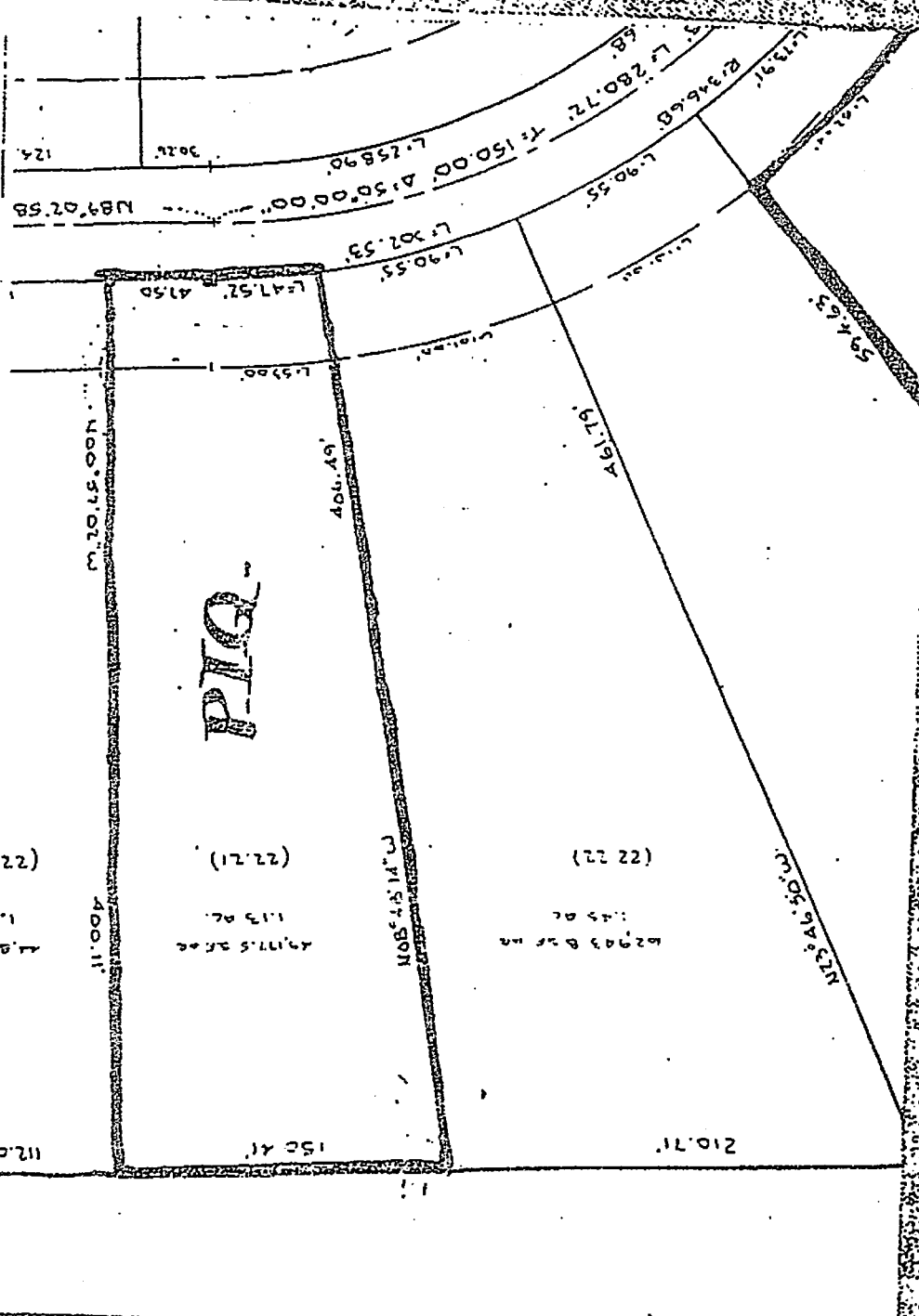
WITNESS:

WITNESS:

SIGNED AND AGREED TO BY:

[Signature] (Buyer) 5/29/90 Date:
Catherine Dymon (Buyer) 5/29/90 Date:
Kier Development Co, Inc (Seller) 6-6-90 Date:
By Kenneth Dohy, President (Seller) Date:

attest: Kenneth Dohy
Secretary



PIQ

112.0
 150.41
 47.17.5
 113.02
 (22.21)
 400.11
 400.57.01.3
 461.79
 594.63
 210.71
 629.03
 145.02
 (22.22)
 108° 45' 14" W
 234.50.01.0
 124
 302.76
 189° 02' 58"

PLAINTIFF'S
EXHIBIT NO. *820*
FOR IDENTIFICATION
DATE *7/29/92* KMC
REPT

ZONTAN SZATMARY *59-1846* **1301**
CATHLEEN SZATMARY
318C TEXAS ROAD *5/29/90*
MORGANVILLE, NJ 07751 *90* 55-455/212

Dev. Co.
Thousand
\$ *5,000.00*

Central Jersey Bank
MAILING OFFICE
MORGANVILLE, NJ 07751 85
30 Jno. 80
Cathleen Szatmary

⑆021204652⑆ 046 53 4359⑈ 1301 ⑈0000500000⑈

PLAINTIFF'S
 EXHIBIT NO. *P24*
 FOR IDENTIFICATION
 DATE: *7/29/92* KMC

ZONTAN SZATMARY *59 1846* 1301
 CATHLEEN SZATMARY
 318C TEXAS ROAD *5/29/90* 55-465/212
 MORGANVILLE, NJ 07751
EX Dev. Co.
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Five thousand
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30,000.00
 Cathleen Szatmary
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ENDORSE HERE
Kurz Development Co
1031969

WRITE STAMP OR SIGN BELOW THIS LINE
 UNLESS PROFESSIONAL INSTITUTION

0412 28012

⑆031200730⑆
 NEW JERSEY NATL BK
 PHILA, PA

⑆031200730⑆

PROCESSED
 CHECKS
 JUN - 1 90

⑆031200730⑆
 NEW JERSEY NATL BK
 PHILA, PA

⑆031200730⑆



Affidavit of Publication

Printer's Fee \$.....

State of New Jersey } ss.
MONMOUTH COUNTY

Personally appeared MARY KASZUBA

of the Asbury Park Press, a newspaper printed and published in NEPTUNE, in said County and State, who being duly sworn, deposeth and saith that the advertisement of which the annexed is a true copy, has been published in the said newspaper
(2) Two times, once in each issue, as follows
June 19th and 21st

A.D., 19 92

Mary Kaszuba
Sworn and subscribed before me this
21st day of JUNE

A.D., 19 92

GLORIA FLAHERTY
Notary Public of New Jersey
My Commission Expires November 18, 1998

Gloria Flaherty
Notary Public of New Jersey

OTHER HEADINGS

SUPREME COURT OF NEW JERSEY
DISTRICT IX ETHICS COMMITTEE
NOTICE

TO: KENNETH C. IREK, ESQ.

formerly of Colts Neck, N.J.

Please take notice that a Complaint against you has been filed with the Secretary of the District IX Ethics Committee (Monmouth County).

You are required to Answer the said Complaint, pursuant to R.1:20-3 et seq. within ten (10) days of the date of publication of this notice by filing same with the Secretary, as follows:

Walter W. Kingsbery, III, Secretary
District IX Ethics Committee
P.O. Box 580

Red Bank, N.J. 07701

Your failure to file such an Answer may result in the imposition of discipline, as determined by the Supreme Court of New Jersey.

District IX Ethics Committee
by: WALTER W. KINGSBERY, III, Secretary

(203.02) 3871

DRAFT

2/16/92

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

DISTRICT IX ETHICS COMMITTEE, :
Complainant : DISCIPLINARY ACTION
v. : COMPLAINT
KENNETH F. IREK, ESQ., :
Respondent :

District IX Ethics Committee by way of Complaint against
the respondent, says:

GENERAL ALLEGATIONS

1. Kenneth F. Irek (Respondent) was admitted to the Bar of this State in 1981.
2. Respondent's last known address was 41 Highway 34, P.O. Box 161, Colts Neck, New Jersey 07722.
3. The Grievants, Cathleen and Zontan Szatmary reside at 3 Ware Place, Middletown, New Jersey 07748.

COUNT ONE

1. Respondent is the sole shareholder and officer of Kirex Development Company.
2. Respondent is the attorney for Kirex Development Company.
3. On or about May 23, 1990 Respondent on behalf of Kirex Development Company and as the attorney for Kirex Development Company, negotiated a real estate contract with the Grievants.
4. The real estate contract called for the sale of a vacant building lot in Jackson Township, New Jersey for a purchase price of \$35,000.
5. The contract called for a deposit of \$5,000 to be paid.
6. The \$5,000 deposit was to be held in trust by seller's attorney until time of closing.
7. Attached as Exhibit A is a copy of the March 23, 1990 real estate contract.

8. Attached as Exhibit B is a copy of the \$5,000 check from the Grievants which was endorsed and signed by Kirex Development Company.

9. The Grievants proceeded through their attorney in doing all necessary preparatory work in anticipation of the closing on the building lot.

10. Shortly after entering into the contract the Respondent disappeared.

11. Respondent's company, Kirex Development Company never fulfilled its obligations under the contract.

12. The Grievants have made demand and repeated requests for the return of the \$5,000 deposit.

13. As of the date hereof, neither the Respondent or Kirex Development Company has returned the \$5,000.

14. Respondent violated Rule of Professional Conduct 1.15(b) by violating his obligation with respect to "safekeeping property". The Respondent has not returned to the Grievants the funds that the Grievants are entitled to receive.

COUNT TWO

1. All allegations in Count One are repeated.

2. The conduct of the Respondent is in violation of Rule of Professional Conduct 1.3. in that he has not acted with reasonable diligence and promptness in representing his client by not returning the \$5,000 deposit.

COUNT THREE

1. All allegations in Count One and Two are repeated.

2. The Respondent has violated Rule of Professional Count 8.4(c). By not returning the \$5,000 deposit, Respondent has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, the Respondent should be disciplined.

DISTRICT IX ETHICS COMMITTEE

DATED:

By: _____
Robert J. Gaughran, Esq.
Vice Chairman