

SUPREME COURT OF NEW JERSEY

Comments, Explanations and Annotations
by Kenneth F. Irek

In the Matter of Kenneth F. Irek,
An Attorney at Law

“... be disbarred for the knowing
misappropriation of escrow funds... .”

(Page 1, first paragraph,
Supreme Court Order, D-112,
Filed May 13, 1993)

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Comments, Explanations and Annotations

Quote from the record:

“The Disciplinary Review Board having filed a report with the Court recommending that KENNETH F. IREK, formerly of COLTS NECK, be disbarred for the knowing misappropriation of escrow funds in violation of RPC 1:15(b) and RCP 8.4(c) ...”

Legal Question: Does the RPC and the New Jersey Supreme Court’s regulation of New Jersey attorneys apply to funds held by a New Jersey for-profit corporation, that are not in an attorney’s trust account?

Discussion:

Rule 1:20-16 Action by the Supreme Court

(a) Review of Recommendations for Disbarment. The Supreme Court shall review all decisions of the Board that recommend disbarment. The review shall be on the basis of the decision, the transcript of the hearing before the Board, any briefs filed with the Board, and the record of the proceedings before the Ethics Committee, if any. The record shall be supplemented by the filing of briefs and by oral argument before the Supreme Court in accordance with R. 2:5, 2:6 and 2:11, insofar as applicable.

What are “Escrow Funds”?

Chief Justice Wilentz permanently disbarred Kenneth F Irek for the “knowing misappropriation of escrow funds”, so he must have known the definition of “escrow funds”, and also “misappropriation”, although he did not supplement his disbarment order with any finding of facts and conclusions of law. The evidence shows the funds incorrectly called “escrow funds” were actually the deposit monies paid directly to Kirex Development Co. Inc, a for-profit New Jersey corporation, as part of purchase price for the purchase of real estate owned by the corporation.

Conclusion:

RPC 1:15(b) and RCP 8.4(c) only apply to New Jersey attorneys while acting as an attorney, and “escrow funds” must necessarily be funds designated as such and deposited into the attorney’s trust account.

Suggested Revisions to Existing Procedure(s):

None

Fact Summary:

In May of 1990, Plaintiff, Kenneth Frank Irek (Irek) advertised the sale of a vacant construction lot in Jackson, New Jersey, owned by his solely owned New Jersey corporation, Kirex Development Company, Inc. Zontan Szatmary and his wife, Cathleen Szatmary, decided to purchase the lot and retained a licensed New Jersey attorney, Dennis D. Poane to represent them. A "Contract for Sale of Real Estate" was signed by both parties and Cathleen Szatmary made a \$5,000 check payable to "Kirex Dev. Co", dated May 29, 1990, as the initial deposit of the purchase price of \$35,000. Irek, acting in his official capacity as the President of Kirex Development Company, Inc., endorsed the check as "Kirex Development Co", and deposited it into the Kirex business bank account. Dennis D. Poane, Esq, proceeded to prepare for closing with a series of correspondences back and forth with Fran Donahue, a Realtor friend of Irek, at the end of June and early July, 1990. The liens and judgments that Poane knew of would not have exceeded the total purchase price of the lot. On or about August, 1990, Irek became unavailable and the closing never took place and the \$5,000 deposit was not returned. On February 27, 1991, the Szatmarys ("Claimants") filed an Attorney Grievance with the District IX Ethics Committee. On April 12, 1991, Claimants filed a written "Statement of Claim" with the NJLFCP, stating that they lost Five Thousand dollars from Kenneth Irek, based on a Fiduciary Relationship (escrow agent). On July 29, 1992, Cathleen Szatmary testified before the District IX Ethics Committee. On May 11, 1993, Chief Justice Robert N. Wilentz signed an Order that permanently disbarred Kenneth F. Irek and restrained and enjoined him from practicing law in New Jersey. On November 26, 1993, the Trustees of the NJLFCP paid to Zontan and Cathleen D. Szatmary the sum of \$5,000, 'arising from the dishonest conduct of their attorney, Kenneth Irek ...', and received a signed 'Release, Assignment and Subrogation Agreement from the Szatmarys. On December 29, 1994, the New Jersey Lawyers' Fund for Client Protection, filed a Civil Complaint in the Superior Court of New Jersey, Law Division, Mercer County, demanding Kenneth Irek reimburse the NJLFCP for the Five Thousand Dollars (\$5,000), paid on his behalf to the Szatmarys, plus interests and costs of suit. Paragraph 4 of the NJLFCP Complaint states:

"4. In or about August 1990, while representing Zontan and Cathleen Szatmary, defendant embezzled, misapplied and converted to his own use the sum of \$5,000.00 received by him on behalf of Mr. and Mrs. Szatmary as funds to be held, in a fiduciary capacity, in escrow in connection with a real estate transaction."

On March 22, 1995, the Superior Court of Mercer County, Law Division, entered a Five Thousand dollar (\$5,000) Default Judgment against Kenneth Frank Irek and in favor of the NJLFCP. Twenty-five years later, on November 9, 2020, Plaintiff filed a six-count Verified Complaint in the Superior Court of New Jersey, Mercer County, Law Division, claiming, inter alia, that Defendant, the New Jersey Lawyers' Fund for Client Protection, fraudulently obtained the above-described Default Judgment and to declare it void *ab initio*. On November 27, 2020, Plaintiff filed a Motion for Injunctive Relief Temporary Restraints, preliminarily enjoining and restraining Defendants from, inter alia, continuing to engage in conduct related to compelling Plaintiff to reimburse the NJLFCP for the \$5,000 claim they had paid to the claimants. On December 9, 2020, Defendants filed a Cross-Motion to Dismiss Plaintiff's Verified Complaint and deny injunctive relief, claiming, inter alia, lack of subject matter jurisdiction; failure to state a claim upon which relief can be granted; absolute immunity in law and equity; and no showing of irreparable harm or substantial hardship if injunction denied. On December 14, 2020, Plaintiff filed a Reply to Defendants' Cross-Motion, opposing dismissal of his Verified Complaint and Injunctive Relief. On December 15, 2020, Defendants filed a request for leave of court to file a sur-reply. On December 15, 2020, Plaintiff filed a response to Defendants' request to file a sur-reply. On December 18, 2020, a telephonic oral argument was held for 34 minutes, before Judge Douglas H. Hurd, P. J. Cv. On December 21, 2020, Judge Hurd signed an Order granting Defendants' Cross-Claim to dismiss Plaintiff's Verified Complaint, with prejudice, for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, and granting Defendants' objection to Plaintiff's Motion for Injunctive Relief. It is from this Order that Plaintiff appealed to the Superior Court, Appellate Division. On December 21, 2020, Judge Douglas H. Hurd put his motion decision on the record. On January 7, 2021, Plaintiff filed a Notice of Appeal of Judge Hurd's Order. On March 3, 2022, in-person oral argument was heard. On May 18, 2022, the Appellate Division's Per Curiam decision affirmed the Superior Court's dismissal of Irek's Verified Complaint and denial of injunctive relief. On May 18, 2022, Plaintiff filed a Notice of Petition for Certification with the Supreme Court of New Jersey. On June 15, 2022, Plaintiff filed a Petition for Certification with the Supreme Court of New Jersey.