

NEW JERSEY DISTRICT IX
ETHICS COMMITTEE

Comments, Explanations and Annotations
by Kenneth F. Irek

“I don’t know what the man
even looks like.”

(Szatmary Testimony Transcript,
p. 23, line 15-16)

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Comments, Explanations and Annotations

Quote from the record: “I don’t know what the man even looks like”.

Legal Question:

Can an attorney be guilty of misrepresentation to a non-client whom he had never met and that was represented by another New Jersey attorney, pursuant to New Jersey Rule of Professional Conduct, 8.4(c): “It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ...”

Discussion:

Testimony of Cathleen Szatmary, the claimant, (the only person to verbally testify), states she only spoke to Ken Irek one time on the phone, to inquire about a building lot that he owned in Jackson, New Jersey, and had advertised for sale in the newspaper:

“So, we contacted the ad in the paper and spoke to Ken Irek and then he told me where it was, to go look at it. Then he had a woman that represented him, Fran Donahue, that showed us the house in there and then showed us the lots.”

Further along in the testimony, Cathleen Szatmary was asked:

Question from James H. Moody: “You were talking about trying to reach Ken Irek or Fran or someone when you started to become a little concerned as to whether this was going to close. Did you ever speak to Ken Irek directly?”

Answer from Cathleen Szatmary: ***“Not after that, not after the – I only initially spoke to him once in reference to the paper.”***

Q. “And that was to the ad?”

Answer: ***“I believe so.”***

Q. “After that, did you ever speak to him?”

Answer: ***“No, I didn’t. I believe Dennis did, though.”***

Q. “How about your husband, to your knowledge, did he ever speak to him?”

Answer: ***“No.”***

Q. “Did you ever meet him?”

Answer: ***“No.”***

Q. “You never --”

Answer: ***“I don’t know what the man even looks like.”***

Claimant's testimony does not indicate any verbal or other type of misrepresentation. Yet at the conclusion of Cathleen Szatmary's testimony, Robert J. Gaughran, the Ethics Committee Presenter stated:

“Just as a very brief summary, I respectfully submit that although the Respondent is not here he has, at the very least, violated two of the rules of professional conduct, 1.15(b) as it relates to his obligation to safekeep property and that he did not return to the grievant the funds that they are entitled to. And, secondly, I also submit that RPC 8.4(c) has been violated in that the Respondent engaged in conduct that's either dishonest, fraudulent, along with potential misrepresentations to the grievant.”

Robert J. Gaughran's conclusions were not based upon any verbal evidence or admitted documents contained anywhere in that Ethics Committee hearing. But, his unverified opinion was repeated over and over in subsequent proceedings, that claimed that the evidence showed, but never discussed what evidence, just Gaughran's opinion.

Conclusion:

The entire 26-plus-year long legal odyssey began with a conclusion not based on any evidence, by a hearing committee without jurisdiction over Plaintiff.

Suggested Revisions to Existing Procedure(s):

Mandatory De Novo review of any Ethics Committee Hearings by a real judge, in the New Jersey Superior Court.

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.