

NEW JERSEY DISTRICT IX
ETHICS COMMITTEE

Comments, Explanations and Annotations
by Kenneth F. Irek

“That I’m not aware of.”

(Szatmary Testimony Transcript,
p. 19, line 5 and 8)

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Comments, Explanations and Annotations

Quote from the record:

Q. "Okay. Do you know whether there was a discussion, a verbal discussion, between your attorney and Mr. Irek with regard to that question that you raised on the deposit being held in escrow or being –

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

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

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

Legal Question:

Did Plaintiff represent that the \$5,000 deposit would be held in "trust", or "escrow"?

Discussion:

The record contains a number of references to being held in trust and escrow.

1) Testimony of Cathleen Szatmary, the claimant, (the only person to verbally testify), states the following at the District IX Ethics Committee hearing on July 29, 1992:

Question from James H. Moody: "Did you receive any type of correspondence from your attorney indicating any discussions he had with Ken Irek regarding changes to be made in the contract before this one was actually executed?"

Answer from Cathleen Szatmary: ***"I don't know. I have a lot of different letters here, that he gave me copies of, which I don't know exactly if there is any -- I mean, he's -- you mean as far as far as verbally speaking to him or just letters?"***

Q. "Yes, if they spoke on the phone, if there was any clarification of the terms of the contract before you and your husband signed it."

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

Q. "Okay. Do you know whether there was a discussion, a verbal discussion, between your attorney and Mr. Irek with regard to that question that you raised on the deposit being held in escrow or being --".

A. ***"That, I'm not aware of."***

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

A. ***"That, I'm not aware of."***

2) The District IX Ethics Committee Hearing Panel Report, dated August 5, 1992, signed by Richard M. Keil, Chair:

"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. ...

... 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.”

3) Supreme Court of New Jersey, Disbarment Order, signed by Chief Justice Robert N. Wilentz, on May 11, 1993:

“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 RPC 8.4(c), and good cause appearing; It is ORDERED that Kenneth F. Irek, formerly of Colts Neck, who was admitted to the bar of this state in 1981, be disbarred and that his name be stricken from the roll of attorneys of this State, effective immediately; ...”

Conclusion:

The only witness to testify regarding the real estate transaction, did not know if Irek told her attorney, Dennis Poane, that the deposit monies would be held in escrow. That seems to be an important question, but the Ethics Committee did not request that Poane, himself, testify before them, since he was the only person, besides Irek, who actually knew.

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.