

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-382

IN THE MATTER OF :
:
KENNETH F. IREK, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 18, 1992

Decided: December 28, 1992

Robert J. Gaughran appeared on behalf of the District IX Ethics Committee.

Respondent did not appear.¹

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board based on a recommendation for public discipline filed by the District IX Ethics Committee ("DEC"). The complaint charged respondent with violation of RPC 1.15(b) and 8.4(c), by failing to return to grievants a \$5,000 deposit that they were entitled to receive in a real estate transaction. The DEC dismissed charges of violation of RPC 1.3 (lack of diligence)(Second Count).

Respondent was admitted to the New Jersey bar in 1981. At the time relevant to this proceeding, he was the sole shareholder and

¹ Respondent was served with notice of the Board hearing by publication in the New Jersey Law Journal, the Asbury Park Press and the New Jersey Lawyer.

president of Kirex Development Company ("Kirex"). On May 23, 1990, Zontan and Cathleen Szatmary, the grievants in this matter, signed a contract with Kirex for the purchase of a lot in Jackson, New Jersey, for \$35,000. The closing of title was scheduled for June 15, 1990. The contract also provided for a \$5,000 deposit to be held in trust by Kirex until closing of title. On May 29, 1990, grievants paid a \$5,000 deposit by a check made out to Kirex, which endorsed the check as its payee.

According to Cathleen Szatmary, she inquired of her attorney as to why the check had not been made out to an attorney, to be held in his or her trust account, as had been her experience in prior real estate transactions. Her attorney explained that respondent was a lawyer and that he was acting on his own behalf through Kirex. Mrs. Szatmary did not know, however, whether respondent had assured her attorney that he would hold the deposit in his capacity as a lawyer.

Thereafter, grievants and their attorney were unable to reach respondent to schedule a closing date. Numerous telephone calls, letters sent by certified mail, and personal visits to respondent's house and two offices were unavailing. On one particular occasion, grievants were able to reach Fran Donahue, Kirex' representative with whom they dealt in the transaction, but Ms. Donahue, too, was unaware of respondent's whereabouts. As of the date of the ethics hearing, grievants had neither closed title on their property nor recovered their deposit monies.

Respondent did not appear at either the DEC or the Board

hearing, despite notice by publication in several periodicals.

At the conclusion of the ethics hearing, the DEC found that respondent "received money in a fiduciary capacity with the money placed in trust and failed to safeguard it and return it," in violation of RPC 1.15(b). The DEC also found that respondent violated RPC 8.4(c) when he "misrepresented that [the money] would be placed in trust and held until closing and he then absconded with the funds." Hearing Panel Report at 4.

CONCLUSION AND RECOMMENDATION


Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent acted unethically is fully supported by clear and convincing evidence.

Respondent absconded with grievant's deposit monies, which grievants had entrusted to him for safekeeping until closing of title not because respondent was the president of Kirex, but because he was an attorney. Although it is respondent's status as a member of the bar that required him to abide by the high standards expected of the profession, he was also acting as an attorney in the transaction, as Kirex' counsel. Disbarment is, therefore, the only appropriate sanction for his knowing misuse of escrow funds. In re Hollendonner, 102 N.J. 21 (1985). A six-member majority of the Board so recommends. One member would have imposed a two-year suspension, believing that the record did not

clearly and convincingly demonstrate that respondent was acting as an attorney. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 12/20/1992

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board