

FILED

JUN - 7 2004

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

BY *K. Weigand*

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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3 IN THE MATTER OF A SUSPENDED MEMBER)
4 OF THE STATE BAR OF ARIZONA,)
5)
6 **DAVID B. APKER,**)
7 **Bar No. 004741**)
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RESPONDENT.)

No. 02-1106

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on May 8, 2004, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Hearing Officer's Report, filed March 2, 2004, recommending disbarment and restitution.

Decision

The Commission's standard of review is set forth in Rule 58(b), which states that the Commission reviews questions of law *de novo*. In reviewing findings of fact made by a hearing officer, the Commission applies a clearly erroneous standard.

The Commission determined that the Hearing Officer's finding that the record in this proceeding is too vague to support an order of restitution of more than \$1,200.00 was clearly erroneous.¹ The record in this proceeding supports a finding that the client made a \$2,000.00 down payment on the real property that was lost due to Respondent's misconduct.² However, the record is not as clear with regard to the taxes and mortgage

¹ See Hearing Officer's Report and Recommendation, p. 3, finding of fact #12.

² See Declaration of Mary Dobsa Pursuant to Rule 80(i), A.R.C.P., attached to Supplement to the Record filed on January 15, 2004, and Second Notice of Errata, filed on February 27, 2004.

1 payments. Therefore, the Commission finds that restitution in the amount of \$3,200.00 to
2 client Mary Dobsa is appropriate.

3 Therefore, having found that none of the remaining findings of fact are clearly
4 erroneous, the eight³ members of the Commission recommend adopting and incorporating
5 by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation
6 for disbarment, and in addition recommend that restitution in the amount of \$3,200.00 be
7 ordered.

8 RESPECTFULLY SUBMITTED this 7th day of June 2004.

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11 _____
12 Craig B. Mehrens, Chair
Disciplinary Commission

13 Original filed with the Disciplinary Clerk
14 this 7th day of June 2004.

15 Copy of the foregoing mailed
16 this 7th day of June 2004, to:

17 Frederick K. Steiner, Jr.
18 Hearing Officer 8T
2915 E. Sherran Lane
Phoenix, AZ 85016-7057

19 David B. Apker
20 Respondent
P.O. Box 10280
21 Phoenix, AZ 85064-0280

22 and
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26 _____
³ Commissioner Gutierrez did not participate in these proceedings.

David P. Apker
Respondent
2111 E. Highland, Suite 230
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State Bar of Arizona
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by: Kel Weigand
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