

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-121
District Docket No. XIV-03-319E

IN THE MATTER OF :
:
GEORGE OSEI :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: May 19, 2005

Decided: August 2, 2005

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Dominic J. Aprile appeared on behalf of respondent.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), following respondent's guilty plea to the third degree crime of criminal mischief (N.J.S.A. 2C:17-3a(2)).

Respondent was admitted to the New Jersey bar in 1998. He has no history of discipline.

On August 17, 2004, respondent appeared before the Honorable Ira Kreizman, J.S.C., and entered a guilty plea to the second count of an indictment charging him with the third degree crime of criminal mischief. N.J.S.A. 2C:17-3a(2) provides that

A person is guilty of criminal mischief if he:

(1) Purposely or knowingly damages tangible property of another recklessly or negligently in the employment of fire, explosives or other dangerous means listed in section a. of N.J.S. 2C:17-2; or

(2) Purposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property.

At the August 17, 2004 hearing, the judge elicited the factual basis for respondent's plea:

Q. Are you guilty of criminal mischief?

A. Yes.

Q. What did you do?

A. On or about April 15th of 2003, I did do damage to property at 312 Peter Ford Mount Drive.

Q. What town is that in?

A. That's in Freehold. The address is in Freehold, New Jersey.

. . . .

Q. And at that time who was the owner of the property?

A. I do understand that that property belonged to some other person other than myself.

Q. And how did that come about?

A. I understand that the property was sold through foreclosure and there was assessed for bidders that they filed a deed in March 2003 that transferred the property into their name.

Q. And do you agree that the value of damage to the property was somewhere in the vicinity of \$72,000?

A. Approximately so, yeah, your Honor.

Q. Is it correct that you intentionally caused this damage?

A. Yes, your Honor.

[Ex.C7-8.]

Patrolman Ryan Hurley's April 22, 2003 incident report of his April 15, 2003 investigation described the astonishing destruction of property he observed:

Upon arrival, I spoke with Sheila Olt. Olt purchased the home as a foreclosure. The residents are scheduled to be evicted on 4-22-03. According to Olt, the home was immaculate when she walked through it a few weeks ago. She contacted police on this date because she suspected that the residents were destroying the home prior to their departure.

I contacted the resident, George Osei, who invited me into his home. Osei stated that he and his wife were packing their belongings. He refused to acknowledge that he was going to be evicted from his home. Osei repeatedly said that his lawyer was "working on it" and that he owned the house. Osei offered to show me around the home.

While I was in the home I noted many damaged or destroyed items. In the entry of the home there was a 1'-2' hole in the drywall. The natural-finish banister and hardwood flooring had been covered in a black tar-like substance.

In the living room, the carpet had been heavily damaged with bleach (I could still smell bleach in the room). In the side "party" room, there was wet ketchup rubbed into the carpet. There was [sic] also dark red stains on the carpet. Osei said that the stains were from spilled wine. The office area also had wine stains all over the carpet.

In the kitchen, the marble countertops had been broken up. The edges of all the counters were heavily damaged. There was dust from the marble on the floor under the counters. The bathroom near the kitchen had holes in the drywall. On the rear set of stairs, there was more of the black tar-like substance.

After looking through the downstairs of the home Osei took me upstairs. In the connected spare bedrooms there were holes in the drywall and the closet doors were removed. The bathroom that is in between the two rooms was destroyed. The sink was broken into several pieces and the tub had holes broken through it.

The rest of the home appeared to be undamaged. . . .

Osei stated that all of the damage was several months or years old. He further stated that they "partied a lot" in his home and that all of the damage was from "partying hard."

[Ex.D3.]

After respondent entered a guilty plea, he was accepted into the pretrial intervention program (PTI), and ordered to pay \$72,000 in restitution, a fine to the victims' crime compensation board, and a safe neighborhoods assessment.

Following a review of the full record, we determine to grant the OAE's motion for final discipline.

Respondent's guilty plea to an indictment charging him with third degree criminal mischief constitutes conclusive proof of his guilt (R. 1:20-13(c)(1) and (2)); and demonstrates that he has committed a crime that reflects adversely on his honesty, trustworthiness or fitness as a lawyer violating RPC 8.4(b). The sole issue to be determined is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989); In re Infinito, 94 N.J. 50, 56 (1983).

The primary purpose of discipline is not to punish the attorney, but to preserve public confidence in the bar. In re Kushner, 101 N.J. 397, 400 (1986). The level of discipline imposed in disciplinary matters based on the commission of a crime depends on a number of factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Magid, 139 N.J. 449, 452 (1995), citing In re

Lunetta, supra, 118 N.J. at 445-46. Discipline is imposed even though an attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391, 393 (1987).

The OAE noted that the degree of the crime is based on the value of the property destroyed. See N.J.S.A. 2C:17-3(b) ("Criminal mischief is a crime of the third degree if the actor purposely or knowingly causes pecuniary loss of \$2,000 or more. . . ."). The OAE urged us to impose a reprimand. The OAE correctly noted that there are no New Jersey cases in which attorneys have been disciplined solely for committing crimes relating to the destruction of property. Therefore, in support of its recommendation, the OAE relied on In the Matter of Kelleher, 662 N.Y.S.2d 76 (1997), which is somewhat similar to the instant matter.

In Kelleher, the Supreme Court, Appellate Division, Second Department, censured an attorney who was convicted of one count of criminal mischief in the fourth degree. The attorney's conduct resulted from a domestic dispute. Id. In New York, fourth degree crimes require intentional damage to property of another in excess of \$250. Id. at 77. (In New Jersey, fourth degree crimes require damage in excess of \$500 (N.J.S.A. 2C:17-3(b)(2))). Because of Kelleher's intentional damage to the property of another, he was sentenced to three years' probation,

conditioned on his attending psychotherapy, making restitution of \$441.93 to his ex-wife, and abiding by a three-year order of protection for her and their daughter's benefit. Kelleher was also convicted of failing to report his conviction to the Appellate Division within thirty days, engaging in conduct that adversely reflected on his fitness to practice law, and engaging in conduct prejudicial to the administration of justice. Id.

In considering the appropriate discipline to impose, the Court considered that

respondent's criminal conviction resulted from a domestic dispute which does not reflect on his professional ability. Further, at the time of the underlying events, which involved less than one hour, the respondent's mental and emotional health were strained. The respondent admitted that he overreacted to the remarks of his father-in-law which he found hurtful and should have walked away. The respondent reported his conviction when he became aware of the requirement that he do so. He evidenced remorse and has withdrawn from the practice of law. The Special Referee noted that there was nothing venal in the respondent's apparently aberrational behavior.

[Id. at 77.]

The OAE also cited In re Cardullo, 75 N.J. 107 (2003), where the attorney was reprimanded for leaving the scene of an accident after she rear-ended another vehicle. When she was questioned by police officers, she denied that she had been in an accident. Although she eventually admitted being at the

scene, she initially denied hitting the other vehicle, but later admitted hitting it, claiming that it had been the other driver's fault for stopping suddenly. The attorney pleaded guilty to the fourth degree crime of assault by automobile, driving while intoxicated, and leaving the scene of an accident. She had two prior convictions for driving while intoxicated. In determining that a reprimand was the appropriate discipline, we considered the absence of serious injury to the other driver and the attorney's efforts to recover from alcohol addiction. We disciplined the attorney solely on her conviction of assault by auto, not for driving while intoxicated.

The OAE also cited In re Magee, 180 N.J. 302 (2004), where an attorney received a reprimand for entering a guilty plea to two third degree crimes for trying to elude police during a traffic stop and resisting arrest. The attorney also entered a guilty plea to driving while intoxicated. The attorney was admitted into PTI, had his license suspended for six months, and was required to pay mandatory penalties.

In the instant matter, the record establishes that, at least seven days prior to the date respondent was to be evicted, he caused \$72,000 worth of damage to the house that he had lost through foreclosure. According to the subsequent purchaser, Olt, the house appeared "immaculate" during her earlier inspection of

the premises. The police investigation of the matter revealed that respondent attributed the damage to "partying hard," which he did "a lot;" contrary to Olt's assertions, he claimed that the damage had been there for several months or years. We have considered the deliberate nature of respondent's acts, that his crime was not an impulsive act, and that the extent of the damage to the property indicates that his actions occurred over a significant period of time. The tar-like substance spread over the banister and flooring, the broken kitchen countertops and bathroom sink and the holes broken through the bathtub demonstrate that respondent's actions were premeditated. We find that the extent and nature of the damage adversely reflect on respondent's fitness and trustworthiness as a lawyer.

This case is most similar to the New York case of Kelleher, in that they both involved the destruction of property and that the conduct was unrelated to the practice of law. However, the damage in this matter (\$72,000 - a third degree crime) was significantly greater than in Kelleher (\$442 - a fourth degree crime). Unlike the Kelleher matter, there is no showing that respondent was remorseful for his conduct. Also, Kelleher was involved in a domestic dispute; his conduct resulted from the strain on his mental and emotional health and was triggered by hurtful remarks from his father-in-law. Here, respondent

admitted that he intentionally caused the damage to the property. Respondent's conduct was likely committed in anger or out of revenge over being evicted from the house.

We have considered respondent's prior unblemished disciplinary record and the conditions of PTI: he was required to make restitution to the victim and was assessed other fines. On the other hand, we find that the excessive amount of damage to the property is a substantial aggravating circumstance.

Based on these factors, we determine to impose a censure for respondent's misconduct. Member Matthew Boylan, Esq. did not participate.

Because respondent's eviction seems to have triggered such rage and vengeful behavior, we also determine to require him to provide proof of fitness to practice law within sixty days of the date of this decision, as attested to by a mental health professional approved by the OAE.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Isabel Frank

By Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of George Osei
Docket No. DRB 05-121

Argued: May 19, 2005

Decided: August 2, 2005

Disposition: Censure

Members	Censure	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X					
O'Shaughnessy	X					
Boylan						X
Holmes	X					
Lolla	X					
Neuwirth	X					
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	8					1

By Julianne K. DeCore
Chief Counsel