

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-198
District Docket No. XIV-2015-0227E

IN THE MATTER OF
MARC B. SCHRAM
AN ATTORNEY AT LAW

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Decision

Argued: October 20, 2016

Decided: January 23, 2017

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Marc D. Garfinkle 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 disciplinary stipulation filed by the Office of Attorney Ethics (OAE). Respondent admitted engaging in criminal conduct, a violation of RPC 8.4(b). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1985. He has no prior discipline.

The facts are contained in a May 12, 2016 stipulation (S) between respondent and the OAE.

On the afternoon of February 25, 2015, Arthur Alte, IV, a TD Bank customer, cashed his pay check for \$1,185.65 at the drive-up window of the Hazlet, New Jersey branch of TD Bank.

After conducting the transaction, Alte became distracted while on his cell phone and left the drive-up window without retrieving from the transaction tube the bank envelope containing \$1,185.65 in cash and his driver's license.

Realizing his mistake a few minutes later, Alte returned to the bank to retrieve his property, and saw the clear transaction tube still sitting in place with a white envelope inside. When he opened the envelope, he found his driver's license - and sixty-five cents. Alte immediately alerted bank personnel about the missing \$1,185, and contacted local police.

The Hazlet police reviewed the bank's surveillance video for the drive-up area, and observed respondent in a white BMW automobile taking cash out of the transaction tube, counting it, and returning the envelope containing Alte's driver's license and sixty-five cents in change. Respondent, who was driving the very next automobile to move through that lane after Alte, then drove away without conducting a transaction.

Respondent did not return the cash to TD Bank.

Two weeks later, on March 10, 2015, police received information from TD Bank identifying respondent as the driver of the white BMW. Once contacted by police, respondent went to the police station, cooperated fully with police, and admitted having taken the \$1,185 on February 25, 2015. Respondent explained his actions to the police as follows:

Okay. And there were - I think there's three lanes open; two of the lanes were full, so I went into the open lane.

And in the open lane I went to put my deposit in and when I opened the container to put my money in, my checks in with my deposit slip, there was cash in there. And I didn't know what to do.

And I had a momentary lapse of reason, and it was just sitting there, and I made a bad decision and I decided to - to take the money, because it was there.

[S119;Ex.4.]

On March 15, 2015, respondent reported the matter to the OAE, as required by R. 1:20-13(a)(1). Subsequently, on March 23, 2015, the Monmouth County Prosecutor's Office notified the OAE of a pending criminal charge against respondent, specifically, theft of mislaid property (N.J.S.A. 2C:20-6), a third-degree crime.

On September 15, 2015, respondent submitted his written reply to the grievance, wherein he acknowledged the accuracy of the police report and the statements that he had provided to police.

Respondent was admitted into, and successfully completed, the Pretrial Intervention Program (PTI), and paid full restitution to the victim.

Following our independent review of the record, we are satisfied that the stipulation contains clear and convincing evidence of unethical conduct on respondent's part. Respondent conceded that, by his theft of mislaid property, a third-degree criminal act, he violated RPC 8.4(b). The stipulation supports that finding.

Respondent claimed that he had "a momentary lapse of reason" when faced with the dilemma - to keep or return \$1,185 that he knew belonged to another bank customer. Respondent, however, failed that impromptu character test, deciding to keep the money. Moreover, that lapse continued for another two weeks, until respondent was finally identified by bank employees.

To his credit, once he was identified two weeks later, respondent cooperated with police, self-reported his conduct to the OAE, completed PTI, and made the victim whole again. That said, respondent's conduct was serious, and reflects poorly upon all attorneys of this state.

All that remains is the appropriate quantum of discipline for respondent's misconduct. The discipline for theft/shoplifting has ranged greatly, depending on the nature of the

theft and the presence of mitigating or aggravating factors. See, e.g. In re Devaney, 181 N.J. 303 (2004) (reprimand for attorney who pleaded guilty to two counts of third degree theft of movable property and third degree obtaining a controlled dangerous substance by fraud; the attorney stole prescription pads from two doctors and used them to unlawfully obtain prescription pain medication, to which she had become addicted after a series of serious physical ailments for which she had been legitimately prescribed painkillers; the attorney cooperated fully with police and ethics authorities, was remorseful, entered PTI, and took steps to overcome her addiction; no prior discipline); In re Walzer, 203 N.J. 581 (2010) (censure for attorney employed by the New Jersey Department of Human Services; on fourteen occasions, he stole food and beverage items from a refreshment counter operated by a blind individual associated with the Commission for the Blind and Visually Impaired Enterprise Program; fourteen separate criminal acts of third-degree shoplifting found; the total value of the items was less than \$100; in aggravation, the attorney victimized an individual who was blind; in mitigation, the attorney entered PTI and made restitution of \$1,200; no prior discipline); In re Jaffe, 170 N.J. 187 (2001) (three-month suspension for attorney who pleaded guilty to third degree theft

by deception; over a nine-month period, he improperly obtained \$13,000 from a healthcare provider by submitting false health insurance claims to reimburse him for prescription formula purchased for his infant child, who was born with life-threatening medical problems; the attorney was entitled to reimbursements of only \$4,400; mitigation included lack of prior discipline, the attorney's physical and emotional stress over his child's illness, his acceptance of responsibility for his actions, payment of full restitution (\$15,985) to the insurer, a \$10,000 civil penalty, and completion of PTI); In re Pariser, 162 N.J. 574 (2000) (six-month suspension for deputy attorney general found guilty of third-degree official misconduct after stealing items from coworkers; the attorney was sentenced to a three-year probationary term, ordered to pay a \$5,000 fine, required to forfeit his public office and, as a condition of his probation, was to continue psychological counseling until discharged; the thefts included small items taken from offices after hours using a master key, as well as the inappropriate use of official telephones; video surveillance was used to observe the attorney taking \$70 in cash that had been planted in one office; mitigation included the attorney's psychiatric problems; in aggravation, the attorney had engaged in a pattern of thefts over time); In re Burns, 142 N.J. 490 (1995) (six-month

suspension for attorney who committed three instances of knowing and unlawful burglary of an automobile, two instances of theft by unlawful taking, and one instance of unlawful possession of burglary tools); In re Breyer, 163 N.J. 502 (2000) (three-year suspension for a law librarian employed by the Administrative Office of the Courts (AOC) who took law books worth more than \$16,000 from the library and sold or traded them to several companies, without the knowledge or approval of the AOC, keeping the money for himself); and In re Bevacqua, 185 N.J. 161 (2005) (three-year suspension for attorney who attempted to use a fraudulent credit card to purchase items at a department store; his wallet contained credit cards in different names; he was charged with identity theft, credit card fraud, and theft, and was accepted into PTI; prior reprimand and six-month suspension).


Here, although respondent's criminal act was serious, it was also spur-of-the-moment, and not a premeditated act, as was the conduct in the suspension cases. In mitigation, respondent was remorseful, self-reported his conduct to the OAE, completed PTI, and paid full restitution to the victim. Finally, respondent has no prior discipline in over thirty years at the bar.

We conclude that a censure, the same sanction meted out in Walzer, an arguably more serious case, adequately addresses respondent's single, apparently aberrant, act.

Members Gallipoli, Rivera and Zmirich voted for a three-month suspension. Member Boyer voted for a reprimand.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Marc B. Schram
Docket No. DRB 16-198

Argued: October 20, 2016

Decided: January 23, 2017

Disposition: Censure

Members	Censure	Reprimand	Three-month Suspension
Frost	X		
Baugh	X		
Boyer		X	
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera			X
Singer	X		
Zmirich			X
Total:	5	1	3


Ellen A. Brodsky
Chief Counsel