Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-070
District Docket Nos. XIV-2019-0281E
and IIB-2021-0900E

In the Matter of	:
David E. Tider	:
An Attorney at Law	:

Decision

Argued: June 21, 2023

Decided: September 14, 2023

Amanda W. Figland 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 between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness).

For the reasons set forth below, we determine that a censure is the

appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1990. At the relevant time, he maintained an office in Teaneck, New Jersey. Since 2014, respondent also has worked for the Stabile Law Firm, LLC, located in Woodbridge, New Jersey, in an "of counsel" capacity.

On November 17, 2017, respondent was censured for violating RPC 1.6(a) (revealing information relating to a representation without the client's consent); RPC 1.8(a) (engaging in a prohibited business transaction with a client); RPC 1.8(b) (using information relating to a representation to the disadvantage of the client); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). In re Tider, 231 N.J. 164 (2017) (Tider I). In that matter, respondent improperly loaned money to a client on two occasions, filed a deceptive and inaccurate lien against the client, and subsequently filed litigation against that client. In connection with the litigation, he used information he knew about his former client, gleaned during the prior representation, to the client's disadvantage in the matter.

We now turn to the facts of the instant matter.

Ralph Wilcox (the Decedent) died on January 26, 2017. The Decedent was predeceased by his ex-wife, Ruth Wilcox, with whom he shared three children. At the time of the Decedent's death, he was residing at a property in Lawrence Township (the Property) owned by Walter Markulec (the Grievant). On or about December 9, 2005, the Grievant purchased the Property from the Decedent and granted the Decedent a life estate in the Property. That life estate allowed the Decedent to continue to live at the Property until his death, without paying rent. Pursuant to this same arrangement, the Grievant was responsible for paying the real estate taxes and the homeowners' insurance for the Property, and the Decedent was responsible for maintaining the Property and paying the cost of any utilities.

In his will, the Decedent designated his niece, Julia Smires (Smires), as the executrix and the sole beneficiary of his estate. On February 3, 2017, Smires retained the Stabile Law Firm (Stabile) to represent the Decedent's estate (the Estate) and to perform the duties of the executor of the Estate as identified in paragraph 8 of the Decedent's will. On September 11, 2017, Smires signed a Limited Power of Attorney authorizing William J. Popovich, Esq., of Stabile to act as her "agent," to execute papers for her, and to perform any necessary act to administer the Estate of the Decedent. On October 7, 2018, some twenty months after retaining Stabile, Smires died.

The assets of the Estate were described as antique motor vehicles; motorcycles; mechanic's tools; furnishings; some personal items; a bank account; and an annuity. The tangible items were located at the Property. Three parties, all represented by counsel, had claims to the antique vehicles – the surviving Wilcox children, the Grievant, and Smires. Ultimately, respondent replaced Popovich as counsel for the Estate and Smires.

The Grievant's attorney, Angelo Ferrante, Esq., claimed that the Decedent owed the Grievant money for maintenance, which the Decedent should have, but failed to perform, on the Property between 2005 and 2017, and for storage fees for maintaining the antique vehicles at the Property for many months after the Decedent's passing.

The surviving Wilcox children, represented by Eliana Baer, Esq., claimed that they were owed half of the value of the net proceeds of the sale of the four antique vehicles, as previously set forth in both a (1) May 25, 2005 Marital Settlement Agreement (the MSA) between the Decedent and his ex-wife, Ruth, and (2) a July 27, 2007 post-judgment order. The MSA provided that the Decedent and Ruth were to agree on a listing price to sell the antique vehicles, based upon the average of two independent appraisals. The parties were required to accept any offer within five percent of the listing price. The July 27, 2007 post-judgment order further provided that Ruth and the Decedent "shall contact

Barry Szaferman, Esq. to appoint an auctioneer to sell the antique vehicles in public auction."

Respondent was aware of the claims filed against the Estate by Ferrante and Baer. In fact, respondent communicated with Ferrante and Baer regarding these claims over the course of several months. Ferrante wrote to respondent and Baer on October 10, 2017, on behalf of the Grievant, and demanded $37,970.08 from the Estate. This figure was for (1) repairs the Grievant had made, or needed to make to the Property, so that he could obtain a certificate of occupancy, and (2) storage fees charged for the Estate's use of his property to store assets following Decedent's death, in January 2017.

On February 15, 2018, Baer wrote to respondent, produced the July 27, 2007 Order in the Wilcox divorce matter and the MSA signed by the Decedent, and asked respondent to follow the method to appraise and sell the antique vehicles identified in the MSA and the July 27, 2007 Order.

On March 12, 2018, Ferrante advised respondent and Baer, via e-mail, that the Grievant would not allow the antique vehicles to be appraised, removed, or sold until his maintenance costs and storage fee claim had been resolved.

In April 2018, Ferrante became aware that respondent anticipated receiving an annuity payment of approximately $71,000 for the Estate. On August 28, 2018, Ferrante contacted Stabile by e-mail, claiming that respondent

had not responded to his requests for information about the Estate, and asked for payment of the Grievant's storage fee and maintenance claim from the annuity funds.

On August 29, 2018, Stabile advised Ferrante, via e-mail, that the firm had not yet received the annuity funds or been paid for the legal services they had provided for the Estate. Stabile also asked Ferrante for a settlement number and asked when the vehicles could be removed from the Property.

On August 31, 2018, Ferrante advised Stabile that the Grievant was demanding $61,309.95 through the end of August 2018. On August 31, 2018, respondent reviewed the Grievant's demand and commented by e-mail to others at Stabile that "I can't see negotiating until we get funds."

On September 4, 2018, Ferrante sent an e-mail to both respondent and Stabile, advising that "the vehicles can not be removed unless and until the rent and other expenses are paid [to the Grievant]." On September 7, 2018, respondent entered the Property in an attempt to access the antique vehicles, despite previously having received Ferrante's e-mail cautioning him to the contrary. At that time, the Grievant was at the Property. Consequently, the Grievant observed respondent, told him that he was not permitted to be on the Property, and asked him to leave.

On September 8, 2018, respondent sent an unsigned letter to Ferrante

asking when "the cars may be removed and the property emptied?" Respondent stated that "[o]nce the cars are sold their [sic] will be funds available to resolve the rent which I would like to negotiate." On September 10, 2018, Ferrante sent an e-mail to Stabile notifying the firm that there should be no further contact with the Grievant without Ferrante's knowledge or consent.

On September 11, 2018, Ferrante notified respondent, Stabile, and Baer that, if the Estate paid the Grievant one half of the annuity funds, the Grievant would agree to release the vehicles. Ferrante also reminded respondent and Stabile that Baer was also involved in the Estate dispute, and that Baer would also have to consent to an arrangement to sell the antique vehicles on behalf of the surviving Wilcox children.

On September 12, 2018, respondent sent an e-mail to Ferrante, stating "I wish to remove the cars, have them checked, appraised, and sold at auction. I can not do so in the garage where they sit." Ferrante never reached an agreement with respondent or Stabile that the Estate would pay any specific amount to the Grievant as reimbursement for maintenance expenses for storage fees. Neither Ferrante nor the Grievant gave respondent permission to enter the Property.

Nevertheless, on September 15, 2018, respondent entered the Property, for the second time, with the purpose to remove the antique vehicles so that he could get the vehicles appraised and transported out of state to be sold at auction.

Respondent neither notified nor received permission from the Grievant, Ferrante, or Baer.

On September 15, 2018, respondent arrived at the Grievant's house prior to a tow service. Respondent knew that the house was vacant and entered the garage to gain access to the vehicles. Respondent then gave the tow service access to the vehicles in the garage. The tow service moved one of the Grievant's vehicles from the driveway, which was not one of the antique vehicles in dispute, in order to access the antique vehicles stored in the garage.

The police arrived at the Property after two antique vehicles had been removed by the tow service. Subsequently, after speaking with a Mercer County Assistant Prosecutor, respondent directed the tow service to return the vehicles to the Grievant's property. A towing employee confirmed that he was on the Grievant's property to remove the antique vehicles and that respondent was present. The employee had been instructed to tow the four vehicles to his yard, and the vehicles were to be shipped to an auction house in Florida by a separate shipping company.

On September 27, 2018, the Grievant filed Complaint-Summons S-2018-000622-1107 with the Municipal Court of Lawrence Township, and respondent was subsequently charged with trespassing, a disorderly persons offense. On March 20, 2019, respondent appeared before the Honorable Lewis J. Korngut,

J.M.C., and, after his motion to dismiss was denied, he pled guilty to a lesser offense of violating a municipal ordinance, and was fined $350, plus court costs.

On January 15, 2020, the OAE conducted a demand interview, at which time respondent admitted that, on September 15, 2018, he had trespassed on the Grievant's property in an effort to obtain the antique vehicles in the Estate dispute. Additionally, respondent confirmed that his guilty plea to the municipal ordinance was made knowingly and voluntarily.

Based on the above facts, respondent admitted to having violated RPC 8.4(b) by engaging in a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer. The OAE recommended that respondent receive a reprimand.

On April 12, 2023, respondent, through his counsel, sent a letter to the Office of Board Counsel indicating that he agreed with the analysis and recommendation advanced in the disciplinary stipulation.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent committed the charged unethical conduct.

Specifically, respondent violated RPC 8.4(b), which prohibits a lawyer from committing "a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It is well-settled that a

violation of this Rule may be found even in the absence of a criminal conviction or guilty plea. See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime); In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

Respondent readily admitted that he trespassed on the Grievant's property on September 15, 2018. Accordingly, he violated RPC 8.4(b), despite not having been convicted of trespassing (although he pled guilty to a municipal ordinance violation, a lessor offense), Gallo at 121.

N.J.S.A. 2C:18-3(a) states, in relevant part, that "[a person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any . . . structure . . . ." Respondent's misconduct meets all the elements of the trespassing statute. Respondent admitted that he trespassed on the Grievant's property, on September 15, 2018, in an effort to obtain the antique vehicles in the Estate dispute. Respondent knew, based upon communications with the Grievant's attorney, Ferrante, that he was not licensed or privileged to enter the Grievant's property, including the garage. This knowledge was evidenced by the e-mails sent by Ferrante on September 4 and September 10, 2018. Additionally, there was no written or oral agreement

between respondent and the Grievant, or anyone on behalf of the Grievant, which permitted respondent to access the Property. Further, respondent admitted to surreptitiously entering the Property at a time that he knew the Grievant would not be present. As such, respondent engaged in a criminal act which reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b).

In sum, we find that respondent violated RPC 8.4(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

There is limited disciplinary precedent addressing the quantum of discipline for trespassing, in violation of RPC 8.4(b) and N.J.S.A. 2C:18-3(a). In In re Valvano, 240 N.J. 220 (2019), an attorney was censured, in a consent matter, for trespassing during his representation of a physician in a dispute with the CEO of an urgent care center. The attorney entered the urgent care facility with a locksmith and changed the locks of the front entrance of the facility and the private office of the CEO, in violation of RPC 8.4(b). The attorney also retained an individual to block the CEO's entry to the urgent care facility the next day to "intimidate him or threaten him with harm," while the attorney and his client entered and exited the CEO's private office space several times without the CEO's permission. The attorney additionally violated RPC 5.5(a)(l)

(practicing law while ineligible for five months) and RPC 8.4(c). That attorney had no prior discipline.

Respondent's misconduct is remarkably similar to the attorney's conduct in Valvano. Like Valvano, respondent intentionally trespassed on another party's property to engage in self-help, rather than obtaining an order from a court, or engaging in some other non-criminal mechanism to resolve the parties' dispute over the antique vehicles. Unlike Valvano, respondent did not commit additional RPC violations; however, unlike Valvano, respondent has prior discipline (a censure), for dissimilar, yet, dishonest conduct.

In our view, respondent's misconduct is more serious than that of attorneys who engaged in less serious criminal acts and were admonished or reprimanded for their conduct. See, e.g., In the Matter of Michael E. Wilbert, DRB 08-308 (November 11, 2009) (admonition for possession of eight rounds of hollow-point bullet ammunition, a violation of N.J.S.A. 2C:39-3(f), and possession of an over-capacity ammunition magazine, in violation of N.J.S.A. 2C:39-3G), fourth-degree crimes for which the attorney was admitted into a pretrial intervention program; no prior discipline); In re Fattell, 242 N.J. 145 (2020) (reprimand for attorney who pleaded guilty to criminal mischief, a disorderly persons offense, in violation of N.J.S.A. 2C:17-3(a)(l); no prior discipline). In re Murphy, 188 N.J. 584 (2006) (reprimand imposed on attorney

who twice presented his brother's driver's license to police in order to avoid prosecution for driving-under-the-influence charges, in violation of RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d); in addition, the attorney failed to cooperate with the OAE's investigation of the matter, in violation of RPC 8.1(b); no prior discipline); In re Thakker, 177 N.J. 228 (2003) (reprimand for an attorney who pleaded guilty to harassment in violation of N.J.S.A. 2C:33-4(a), a petty disorderly persons offense, for repeatedly calling a former client after she told him to stop and continuing to call the client and a police officer after the police officer warned him to stop; no prior discipline); In re LaVergne, 168 N.J. 409 (2001) (reprimand for attorney found guilty in municipal court of theft by failure to make required disposition of property received, a disorderly persons offense; the attorney entered into an agreement to purchase an automobile, never made payment, and instead took possession of the vehicle and allowed it to be registered to a new owner).

In crafting the appropriate discipline, we also consider mitigating and aggravating circumstances. In mitigation, respondent entered into a disciplinary stipulation with the OAE. In the Matter of John E. Maziarz, DRB 1-251 (January 9, 2019) at 12 (noting that attorneys who enter into disciplinary stipulations save the OAE "valuable resources"), so ordered, 238 N.J. 476 (2019).In aggravation, respondent previously was censured, on November 17, 2017, in Tider I, for

violating RPC 1.6(a), RPC 1.8(a), RPC 1.8(b), RPC 8.4(c), and RPC 8.4(d).

On balance, weighing respondent's surreptitious effort to remove the antique vehicles and his prior censure for dishonest conduct, we conclude that his willingness to cooperate with the OAE is insufficient mitigation to warrant imposition of discipline less than the censure we imposed in Valvano. Accordingly, we determine that a censure remains the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Vice-Chair Boyer and Members Menaker, Petrou, and Rodriguez voted to impose 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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David E. Tider
Docket No. DRB 23-070

Argued: June 21, 2023

Decided: September 14, 2023

Disposition: Censure

Members	Censure	Reprimand
Gallipoli	X	
Boyer		X
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker		X
Petrou		X
Rivera	X	
Rodriguez		X
Total:	5	4

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel