FILED

FEB - 5 2013

DEPARTMENT OF REAL ESTATE
By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Desist and Refrain Order Involving:	)	
	)	Case No. H-4323 SD
JAMES MARVIN ROTH and ROTH CONSTRUCTION CORPORATION,	)	OAH No. 2012050293
	)	
Respondents.	)	
	)	

DECISION

The Proposed Decision dated January 10, 2013, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2)(c) of the Government Code, the following correction is made to the Proposed Decision:

Page 1 of the Proposed Decision, the OAH No. in the caption is amended to read:

OAH No. 2012050293

This Decision shall become effective at 12 o'clock noon on FEB 26 2013.

IT IS SO ORDERED 2/1/13.

REAL ESTATE COMMISSIONER

By AWET P. KIDANE
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Involving: JAMES MARVIN ROTH and ROTH CONSTRUCTION CORPORATION, Respondents.	Case No. H-4323-SD OAH No. 2012050295

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 4, 2013, in San Diego, California.

John W. Barron, Counsel, represented Barbara J. Bigby, Acting Real Estate Commissioner, Department of Real Estate, State of California.

Respondent James Marvin Roth represented himself and Roth Construction Company, and he was present throughout the disciplinary proceeding.

The matter was submitted on January 4, 2013.

SUMMARY

James Marvin Roth and Roth Construction Company engaged in property management activities in 2008 and 2009 without having a real estate broker's license to do so. A preponderance of the evidence supports the issuance of a permanent Desist and Refrain Order that prohibits respondents from further engaging in unlicensed property management activities.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 16, 2012, Barbara J. Bigby, Acting Real Estate Commissioner, signed an Order to Desist and Refrain (the order). The order alleged that respondents James

Marvin Roth (Mr. Roth) and Roth Construction Corporation (RCC) provided property management services without being licensed to do so. The order directed Mr. Roth and RCC "to immediately desist and refrain from performing any and all acts within the State of California for which a real estate broker license is required unless and until they are properly licensed by the Department as a real estate broker and you have paid in full the money you received on behalf of Anice P. on her real property, as set forth above."

The order was served on respondents, who timely appealed and requested a hearing.

This matter was consolidated with a pending notice of intent to issue a permanent bar order. The matters were set for an administrative hearing

On January 4, 2013, the administrative record was opened; opening statements were given; jurisdictional documents were presented; sworn testimony was taken; documentary evidence was produced; closing arguments were given; the record was closed; and the matters were submitted.

License Histories

2. James Marvin Roth: On January 9, 1973, the Department issued a real estate broker's license to James Marvin Roth in his individual capacity. Mr. Roth's real estate broker's license expired on January 8, 1981. The Department cancelled the fictitious namestyle of James M. Roth Co. on January 8, 1985.

3. Roth Management Corporation: On January 7, 1980, the Department issued a real estate broker's license to Roth Management Corporation. James Marvin Roth was Roth Management Corporation's designated officer. Roth Management Corporations' broker license was renewed several times after it was issued. It expired on September 1, 2012, and it has not been renewed since.

Mr. Roth testified that Roth Management Corporation's primary business involved real estate development, construction, and property management.

4. James M. Roth, Inc.: James M. Roth, Inc. is a closely held California corporation. James Marvin Roth is President of that corporation. James M. Roth, Inc. has never held a real estate license.

Mr. Roth testified that James M. Roth, Inc. was formed as a "personal service corporation" and that it became a general partner in a 110-unit apartment project (the Fairmont project).

5. Roth Construction Corporation: RCC is a closely held California corporation. James Marvin Roth is President of that corporation. RCC has never held a real estate license.

Mr. Roth testified that RCC was formed to develop the Fairmont project. RCC holds a Classification B-1 general contractor's license. Under an operating agreement, RCC was designated as the manger of Talmadge East, LLC.

6. Talmadge East, LLC: Talmadge East, LLC is a limited liability company. James Marvin Roth was a 50 percent member of that company. Anice M. Plikaytis was a 50 percent member of that company. Ms. Plikaytis was designated to serve as Talmadge East, LLC's manager upon James Marvin Roth's death. Talmadge East, LLC never held a real estate license.

Mr. Roth testified that Talmadge East, LLC was formed to develop a 30-unit apartment complex in La Mesa and that the project was transformed into a condominium project after financing the apartment complex became difficult.

Mr. Roth's Background, Education, Training, and Experience

7. Mr. Roth was born in San Diego in 1949. His father was a general contractor. Mr. Roth assisted his father in construction activities when he was growing up. Mr. Roth graduated from Grossmont High School in 1967, after which he attended San Diego State University (SDSU). Mr. Roth received a bachelor's degree in Business Administration from SDSU in 1971.

After college, Mr. Roth and his father built custom homes, apartment buildings and condominium projects in San Diego County. Mr. Roth served as property manager for some of those projects.

8. Mr. Roth established his own development, construction, and property management businesses. He hired Anice M. Plikaytis, who served as Mr. Roth's executive assistant for approximately 25 years.

The Talmadge East, LLC Project

9. In November 2001, Mr. Roth, Ms. Plikaytis, and two others formed Talmadge East, LLC for the purpose of developing a 30-unit apartment complex in La Mesa. Sometime thereafter, the four members signed an Operating Agreement. Under that agreement:

> 2.1 Management of the Company by Manager.
>
> A. Management by Manager. The manager shall have the authority to conduct all the business and operations of the Company . . .
>
> [¶] . . . [¶]

2.2 Election of Managers.

A. Number, Term, and Qualifications. The Company shall initially have one (1) Manager, Roth Construction Corporation, a California corporation. The Manager shall be elected or removed by the vote or written consent of the Majority Vote of the Members' Interests.

[¶] . . . [¶]

D. Death of James M. Roth. Except as may otherwise be provided in the Addendum (Exhibit A hereto), Roth Construction Corporation shall resign as Manager and upon the death of James M. Roth, the Manager shall immediately become Anice M. Plikaytis.

2.3 Powers of Managers. The Manager shall have the full power and authority to take any such action on behalf of the Company as required and as is provide by the Act and this Agreement. . . .

10. Two members of Talmadge East, LLC transferred their interests and terminated their memberships. Under the operating agreement, Mr. Roth and Ms. Plikaytis, the remaining members of the company, were deemed to have contributed an equal amount of capital and owned equal interests in the company. Financing the construction of the apartment complex became problematic and the project was transformed into a condominium project.

11. After condominiums were constructed, RCC took over property management responsibilities. In 2008 and 2009, RCC screened tenants, showed properties, negotiated leases, collected rents, deposited rents into three non-trust accounts, made mortgage payments, paid common expenses, and provided accounting and bookkeeping services. Unless exempted, RCC's property management activities required RCC to possess a real estate broker's license.

12. With respect to the condominium units for which rents were collected, RCC did *not* always own any of those condominium units; in time, six units were owned by Ms. Plikaytis in her own name; one of the six units that Ms. Plikaytis owned was not encumbered by a mortgage.

13. According to Mr. Roth, the condominium project experienced significant cash flow problems and rents collected by RCC were insufficient to pay the mortgages. Mr. Roth

asked Ms. Plikaytis to refinance the condominium in her name on which nothing was owed, but she refused to do so. Mr. Roth, through RCC, stopped making mortgage payments on the condominiums Mr. Roth, his family members and Ms. Plikaytis owned. Mr. Roth, through RCC, failed to provide to Ms. Plikaytis the rents collected from the rental of the condominiums in her name.

14. Two condominiums in Ms. Plikaytis's name were sold as originally agreed; three condominiums in her name were sold by the bank on a short sale basis after mortgage payments were not made; and Ms. Plikaytis retained possession and title to the remaining condominium in her name on which there was no mortgage.

The Consumer Complaint

15. On August 25, 2009, Ms. Plikaytis filed a consumer complaint with the Department against Mr. Roth and Roth Management Corporation. Ms. Plikaytis identified three condominiums as being the subject of her complaint. She asserted that Mr. Roth "told me unless I did what he said, he was going to continue to not make my mortgage payments." Ms. Plikaytis represented that she had retained an attorney, George de la Flor, and had filed a civil action in the San Diego Superior Court. A detailed statement was attached to the consumer complaint, as were other documents.

The Department's Investigation

16. The Department assigned the consumer complaint to Deputy Real Estate Commissioner Sara Knapton (Deputy Knapton) for investigation. Deputy Knapton reviewed various documents and determined that Roth Management Corporation was not acting as a property manager, that RCC was acting as a property manager, that RCC was not a licensed real estate broker, that Talmadge East, LLC was not a licensed real estate broker, that Mr. Roth's real estate broker license had expired, and that Talmadge East, LLC did not own several of the properties that were being managed by Mr. Roth and RCC. Deputy Knapton did not speak with Mr. Roth.

Deputy Knapton prepared a Case Analysis dated August 28, 2011, in which she referred to an audit conducted by Department Auditor Jennifer Borromeo (Auditor Borromeo). Deputy Knapton concluded, among other matters, that RCC and Mr. Roth violated Business and Professions Code section 10130 by conducting property management activities without having a real estate license.

17. Auditor Borromeo, an experienced Department auditor, conducted an audit in this matter in which she reviewed numerous records, including bank statements, Talmadge East, LLC's operating agreement, residential lease agreements, corporate resolutions, and profit and loss reports. She did not review tax returns. Auditor Borromeo spoke with Mr. Roth at least twice. At the conclusion of her investigation, she prepared a comprehensive audit report.

Auditor Borromeo's audit disclosed that Roth Management Corporation did not maintain any trust account and did not provide management services for Talmadge East, LLC; however, RCC maintained three non-trust accounts for Talmadge East, LLC. Auditor Borromeo did not prepare a bank reconciliation or determine RCC's accountability based on a lack of records.

The audit disclosed that RCC served as property manager for Talmadge East, LLC. RCC collected at least $98,000 in rental receipts and made at least $37,000 in mortgage payments for Ms. Plikaytis's units in 2008, and RCC collected at least $15,000 in rental receipts and made no mortgage payments for those units in 2009. RCC was not licensed by the Department.

18. Mr. Roth was cooperative and truthful in his dealings with the Department. He provided all records and documents that were requested.

According to Auditor Borromeo's report, Mr. Roth "believes (even after the exit conference) that Roth Construction Corporation (RCC) conducts principal activities as manager of Talmadge East LLC (TE)." She strongly disagreed with Mr. Roth's conclusion because RCC did not own many of the condominiums it managed; the existence of the operating agreement did not legitimize RCC's unlicensed property management; and without RCC being licensed by the Department, there was no way that the Department could meet its regulatory responsibilities and exercise authority over RCC to ensure RCC's compliance with the Real Estate Law. Auditor Borromeo concluded that the exemptions from licensure under Business and Professions Code section 10133 did not apply.[1]

19. Auditor Borromeo could not determine whether Mr. Roth, or RCC, or any other entity in which Mr. Roth was involved actually owed any money to Ms. Plikaytis based upon the materials and documents she reviewed.

The Civil Action

20. According to Ms. Plikaytis, her civil suit against Mr. Roth and others included the facts and circumstances giving rise to the desist and refrain order that is the subject of this administrative proceeding. Mr. Roth admitted that the evidence central to this administration action was a "small component" of the civil action Ms. Plikaytis filed.

---

[1] Auditor Borromeo's testimony did not establish that a real estate broker's license was required in this matter because expert opinion is not admissible on questions of law or the interpretation of a statute. (Communications Satellite Corp. v. Franchise Tax Bd. (1984) 156 Cal.App.3d 726, 747.) Auditor Borromeo's testimony was admitted to establish how the Department interpreted relevant statutes because courts give a measure of deference to an administrative agency's interpretation of a statute the agency is required to enforce as appropriate under the circumstances. (*Yamaha Corporation of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8.)

The civil suit resulted in a money judgment in favor of Ms. Plikaytis in an amount in excess of $1.4 million, according to Ms. Plikaytis. Mr. Roth did not dispute the amount of the civil judgment she obtained. That judgment included amounts of rent that Mr. Roth and RCC withheld from Ms. Plikaytis. Mr. Roth has since declared bankruptcy. Payment of amounts due under the civil judgment is presently before the bankruptcy court.

No documentation was provided relating to the civil action. Nevertheless, it was undisputed that Ms. Plikaytis's civil action against Mr. Roth resulted in a final judgment on the merits and that it necessarily included what Mr. Roth and RCC owed to Ms. Plikaytis for rent. Reaching any decision in this matter concerning the precise amount of money owed to Ms. Plikaytis by Mr. Roth and RCC is unnecessary under the doctrine of collateral estoppel. The requirement of the payment of such amounts is now properly before the bankruptcy courts.

The Defenses

21. Mr. Roth observed that the desist and refrain order contained some inaccurate information because it alleged he was President of Talmadge East, LLC (he was simply a member) and the complex included many more units than the order suggested. Mr. Roth also argued that Ms. Plikaytis had not been the subject of any fraud or wrongdoing and introduced a schedule of income and expenses he prepared and Talmadge East, LLC's partnership's tax returns for the years 2008, 2009, and 2010. The alleged factual discrepancies and Mr. Roth's argument that Ms. Plikaytis was treated fairly did not go to the heart of the problem that gave rise to the desist and refrain order – whether Mr. Roth and RCC provided unlicensed property management services.

22. On his own behalf and on behalf of RCC, Mr. Roth argued that neither he nor RCC was required to hold a real estate broker's license under a "principal activity" exception and that he and RCC were exempted from licensure under Business and Professions Code section 10133. Mr. Roth's argument was based on a misunderstanding of the law.

Applicable Statutory Law

23. Business and Professions Code section 10130 provides in part as follows:

> It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker . . . within this state without first obtaining a real estate license from the department . . . .

24. Business and Professions Code section 10131 provides in part as follows:

> A real estate broker . . . is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or

negotiates to do one or more of the following acts for another or others:

[¶] . . . [¶]

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property . . . or collects rents from real property[2] . . . .

25. Business and Professions Code section 10137.1 provides:

Nothing contained in this division shall preclude a partnership from performing acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker.

Conclusions

26. Neither Mr. Roth, in his individual capacity, nor RCC was a licensed real estate broker in 2008 and 2009. Mr. Roth, on behalf of RCC, screened tenants, showed properties, negotiated leases, collected rents, deposited rents into non-trust accounts, made mortgage payments, paid common expenses, and provided accounting and bookkeeping services for condominium units that Mr. Roth and RCC did not own. The services provided involved property management for which a real estate broker's license was required. Mr. Roth and RCC's legal defenses involved an essential misunderstanding of the law.

---

[2] Under Business and Professions Code section 10131.01, subdivision (a), the requirement of licensure set forth subdivision (b) of Business and Professions Code section 10131, subdivision (b) does not apply to the resident manager of an apartment building or to the employees of that manager. Under Business and Professions Code section 10133, the licensing requirements set forth in Business and Professions Code section 10131 do not apply to activities performed by certain entities or persons including a regular officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership; (2) a person holding a duly executed power of attorney from the owner of the real property; (3) an attorney at law in rendering legal services to a client; (4) a receiver, trustee in bankruptcy or other person acting under order of a court of competent jurisdiction; and (5) a trustee for the beneficiary of a deed of trust when selling under authority of that deed of trust. The exemptions are not applicable to persons who uses or attempts to use the exemptions for the purpose of evading the provisions of the licensing law.

Cause exists to affirm the desist and refrain order insofar as it prohibits Mr. Roth and RCC from performing any acts in California for which a real estate broker license is required unless they are first properly licensed.

27. The dispute regarding rents collected by Mr. Roth and RCC from tenants of the condominium units owned by Anice M. Plikaytis was the subject of a civil suit in which a final judgment was issued in Ms. Plikaytis's favor. Payment of that judgment is now before a bankruptcy court.

Cause does not exist to include in the desist and refrain order any requirement that the issuance of a real estate broker license to Mr. Roth or to RCC in the future be conditioned upon payment in full of any money received by Mr. Roth and RCC on behalf of Anice M. Plikaytis as that dispute has been and is before other courts of competent jurisdiction.[3]

LEGAL CONCLUSIONS

Purpose of the Real Estate Broker Licensing Requirement

1. The Real Estate Law does not by its specific terms require a person to be licensed in order to act with regard to his own property or affairs. (*Williams v. Kinsey* (1946) 74 Cal.App.2d 583, 592.)

2. The purpose of the real estate broker licensing requirement is to protect the public from the perils incident to dealing with incompetent or untrustworthy real estate practitioners. (*Greenlake Capital, LLC v. Bingo Investments, LLC* (2010) 185 Cal.App.4th 731, 736.)

3. The licensing of those who rent or collect rents from property for others is a legitimate exercise of the police power to ensure the integrity of those engaged in the business of real estate. One who leases or rents, offers to lease or rent, or collects rents acts as a real estate broker. It is unlawful to act as a real estate broker without having a license from the Department of Real Estate. The exemptions to licensure do not pertain where they are used to evade the licensing law. (*Sheetz v. Edmonds* (1988) 201 Cal.App.3d 1432, 1434-1435.)

Burden of Proof

4. Evidence Code section 115 provides:

---

[3] This aspect of the order is made without prejudice to the Department denying an application filed by Mr. Roth or Roth Construction Company in the future for the issuance of a real estate license provided other grounds for denial exist under the Real Estate Law.

> "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.
>
> Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

5. The default standard of proof in civil cases is the preponderance of the evidence, unless otherwise indicated by constitutional, statutory, or decisional laws. (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 365.)

6. The burden of proof to support the issuance of the desist and refrain order in this matter, which does not involve the suspension or revocation of a professional license, is on the Department. The standard of proof is a preponderance of the evidence.

Respondents have the burden of producing evidence in explanation, mitigation, and rehabilitation.

Applicable Law

7. It is unlawful for any person to engage in the business of, act in the capacity of, or assume to act as a real estate broker within this state without first obtaining a real estate license from the department. (Bus. & Prof. Code, § 10130.) A real estate broker includes any person who, for compensation or in expectation of compensation, regardless of the form or time of payment leases or rents or collects rents from real property. (Bus. & Prof. Code, § 10131.) A partnership may perform acts for which a real estate broker's license is required provided that every partner through whom the partnership so acts is a licensed real estate broker. (Bus. & Prof. Code, § 10137.1.)

8. Neither Mr. Roth nor RCC owned the six condominiums that were held in the name of Ms. Plikaytis and, for that reason, the principal activities exception does not apply. The exceptions that are set forth under Business and Professions Code section 10131.01 do not apply as the application of those exemptions in this matter would defeat the salutary purpose of the licensing law.

Authority to Issue a Desist and Refrain Order

9. Business and Professions Code section 10086 provides in part:

> (a) If the commissioner determines . . . a person has engaged or is engaging in an activity which is a violation of a provision of this part . . . or which is a violation of a regulation of the commissioner adopted for the purpose of implementing any provision of this part . . . the commissioner may direct the person to desist and refrain from such activity by issuance of an order specifying the nature of the activity and the factual and legal basis for his or her determination. The respondent to whom the order is directed shall immediately, upon receipt of the order, cease the activity described in the order.
>
> (b) The respondent may, within 30 days after service of the order to desist and refrain, file a request for a hearing . . .
>
> (c) The administrative hearing shall be commenced by the commissioner within 30 days after receipt of respondent's request unless the respondent agrees to a postponement . . . .

10. There is no requirement that a statement of issues or other information be served upon the party. The terms of the desist and refrain order act as a statement of the allegations against a party and a restatement is unnecessary. (*Cal-Am Corp. v. Department of Real Estate* (1980) 104 Cal.App.3d 453, 459.)

Cause Exists to Modify and Affirm the Desist and Refrain Order

11. Cause exists to modify and affirm the Order to Desist and Refrain Order previously issued based upon the factual findings and legal conclusions set forth herein.

//

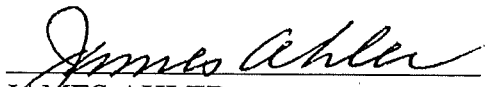
//

DESIST AND REFRAIN ORDER

Based on the factual findings and legal conclusions set forth herein, and good cause appearing, the Desist and Refrain Order previously entered in this matter is modified and affirmed as follows:

JAMES MARVIN ROTH and ROTH CONSTRUCTION COMPANY, whether doing business in their own names, or in any other names, or by fictitious names, or by or through any related entity, ARE HEREBY ORDERED TO IMMEDIATELY DESIST AND REFRAIN from performing any and all acts within the State of California for which a real estate broker license is required unless and until properly licensed by the Department of Real Estate as a real estate broker.

DATED: January 10, 2013



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
APR 18 2012
DEPARTMENT OF REAL ESTATE
By R. Mur

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

To: JAMES MARVIN ROTH and ROTH CONSTRUCTION CORPORATION.	NO. H-4323 SD ORDER TO DESIST AND REFRAIN (B & P Code Section 10086)

The Commissioner ("Commissioner") of the California Department of Real Estate ("Department") caused an investigation to be made of the activities of JAMES MARVIN ROTH, ("ROTH"), and ROTH CONSTRUCTION CORPORATION, ("RCC"), (collectively "Respondents"). Based on that investigation, the Commissioner has determined that Respondents have engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code ("Code"), including acting in the capacity of, advertising or assuming to act as a real estate broker in the State of California within the meaning of Section 10131(b) (representing clients in the capacity of a rental property manager) of the Code.

Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. At all times mentioned herein, ROTH is and was licensed by the Department to conduct real estate activity solely as the designated officer of ROTH MANAGEMENT CORPORATION. In addition, ROTH is the Chief-Executive Officer and Secretary of RCC and the President of TALMADGE EAST LLC ("TE"). Although ROTH is and was an officer for both RCC and TE, those companies are separate and distinct entities.

2. At all times mentioned herein, RCC was not licensed in any capacity by the Department to conduct real estate activity in the State of California.

3. During 2008 and 2009, RCC conducted property management activities on behalf of TE (including collecting rent, showing properties and negotiating least agreements) for real property located at the following addresses in La Mesa, California:

Unit	Address
L-1	5092 Guava Ave #130
L-2	5092 Guava Ave #129
L-5	5092 Guava Ave #126
L-7	5092 Guava Ave #124
L-8	5092 Guava Ave #123
L-10	5092 Guava Ave #121
L-11	5088 Guava Ave #120
L-13	5088 Guava Ave # 118
L-15	5084 Guava Ave #111

4. Units L-1, L-10-13 and L15 were owned by ROTH, while Units L-2, L-5, L7 and L-8 were owned by Anice P.

5. During 2008, Respondents collected $98,445.60 in rent for the properties owned by Anice P. However, Respondents only paid $37,075.45 of that amount for the mortgages owed on the properties they managed for Anice P. and failed remit the remaining funds collected on her properties to Anice P.

6. During 2009, Respondents collected $15,861.50 in rent for the properties owned by Anice P. However, Respondent failed to make any mortgage payments on the

///

properties they managed on behalf of Anice P. and also failed to remit any of the funds they collected on her properties to Anice P.

CONCLUSIONS OF LAW

Based on the Findings of Fact contained in Paragraphs 1 through 6, above, JAMES MARVIN ROTH and ROTH CONSTRUCTION CORPORATION have performed and/or participated in property management activities which require a real estate license under Section 10131(b) of the Code during a period of time when (1) JAMES MARVIN ROTH was licensed to conduct real estate activity solely as the designated officer of ROTH MANAGEMENT CORPORATION, and (2) ROTH CONSTRUCTION COMPANY was not licensed to conduct real estate activity by the Department in any capacity, in violation of Section 10130 of the Code.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, JAMES MARVIN ROTH and ROTH CONSTRUCTION CORPORATION, whether doing business under their own names, or any other names or fictitious names, or by and/or through any related entity, ARE HEREBY ORDERED to immediately desist and refrain from performing any and all acts within the State of California for which a real estate broker license is required unless and until they are properly licensed by the Department as a real estate broker and you have paid in full the money you received on behalf of Anice P. on her real property, as set forth above.

DATED: 3/16/12

BARBARA J. BIGBY
Acting Real Estate Commissioner

///

///

-NOTICE-

Business and Professions Code Section 10139 provides that, "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)...."

cc: JAMES MARVIN ROTH
4850 Talmadge Park Row
San Diego, CA 92115

ROTH CONSTRUCTION CORPORATION
Attn: James M. Roth, Agent for Service of Process
4850 Talmadge Park Row
San Diego, CA 92115

ATTY JWB/km