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DEPT. OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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<p>11 In the Matter of the Accusation of</p> <p>12 ROTH ASSET MANAGEMENT and</p> <p>13 PETER A. DURSI, individually and as</p> <p>14 designated officer of Roth Asset</p> <p>15 Management,</p> <p>Respondents.</p>	<p>No. H-05750-SD</p> <p><u>ACCUSATION</u></p>
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16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
17 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of
18 Accusation against ROTH ASSET MANAGEMENT ("RAM") and PETER A. DURSI
19 ("DURSI"), collectively "Respondents," alleges as follows:

- 20 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
- 21 Supervising Special Investigator, makes this Accusation against Respondents.
- 22 2. All references to the "Code" are to the California Business and Professions Code and
- 23 all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

24 **LICENSE HISTORY**

25 3. Respondent RAM has been licensed by the Department as a real estate corporation
26 ("REC"), license identification number ("License ID") 02065741, from on or about June 15, 2018,
27 through the present, with RAM's license scheduled to expire on August 28, 2026, unless renewed.
28 From on or about March 12, 2022, through on or about August 28, 2022, RAM was licensed with

1 no business address (“NBA”), and the license was in a non-working status. From on or about June
2 15, 2018, through on or about March 11, 2022, the late James Marvin Roth (“JMR”), License ID
3 00445059, was RAM’s designated officer (“D.O.”). JMR’s REB license expired on January 8,
4 1985, and was never renewed. RAM was able to obtain a REC license pursuant to Code section
5 10171.1 after JMR submitted evidence of having completed 45 hours of approved continuing
6 education courses. On or about March 11, 2022, JMR passed away.

7 4. From on or about August 29, 2022, through the present, RAM has been licensed
8 through the REB license of DURSI, License ID 01378682, and DURSI is RAM’s current designated
9 officer (“D.O.”). According to Department records to date, RAM has no branch offices, maintains
10 no licensed fictitious business names with the DRE, and employs no broker associates or
11 salespersons.

12 5. Respondent DURSI has been licensed by the Department as a REB, License ID
13 01378682, from on or about August 17, 2006, through the present, with DURSI’s license scheduled
14 to expire on August 16, 2026, unless renewed. DURSI was previously licensed as a real estate
15 salesperson (“RES”) from on or about April 22, 2003, to August 16, 2006. According to Department
16 records to date, DURSI currently maintains no licensed fictitious business names, is the D.O. for
17 REC USAeBroker Inc., License ID 02165448, and is a broker associate for REC La Jolla Partners
18 Inc., License ID 01932411, and REC Real Brokerage Technologies, License ID 02022092.

19 **BROKERAGE: RAM**

20 6. At all times mentioned, in San Diego County, California, RAM acted as a REC,
21 conducting licensed activities within the meaning of Code section 10131(b): leasing or renting,
22 offering to lease or rent, or collecting rents from real property for others.

23 **AUDIT NO. SD220014**

24 7. On March 29, 2023, the Department completed an audit examination of the books
25 and records of RAM’s real estate activities that require a real estate broker license under Code
26 section 10131. The audit examination in Audit No. SD220014, covered the time period March 1,

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1 2022, to October 31, 2022 (“audit period”). The audit was limited to RAM’s property management
2 activities.

3 8. According to DURSI, RAM's corporate structure as of the audit date was as follows:

<u>Name</u>	<u>Title</u>	<u>License</u>	<u>Shareholder %</u>
Debra Ann Roth	President and Treasurer	Unlicensed (wife of JMR)	100%
DURSI	Secretary	REB License ID 01378682	0%

7 9. According to DURSI, RAM managed one apartment/townhome complex with 70
8 apartment units and 40 townhomes for 1 owner during the audit period. RAM collected rents, paid
9 expenses, and screened tenants for compensation. There was a total collection of approximately
10 \$2,200,000.00 in the last twelve months in rents and security deposits from the tenants. RAM
11 charged a monthly management fee of 3.5%.

12 10. RAM maintains the following bank accounts for property management:

13 a. **Bank Account 1 (“BA1”)**

14 Bank: Torrey Pines Bank, a division of Western Alliance Bank
15 Account Name: Fairmount II LP
16 Account #: XXXXXXXX1182
17 Signatories: JMR
Debra Ann Roth
18 Signatures required: One (1) signature
19 Description: BA1 was maintained for handling the receipts and disbursements
of trust funds for a single beneficiary in connection with RAM's
property management activity.

20 b. **Bank Account 2 (“BA2”)**

21 Bank: Torrey Pines Bank, a division of Western Alliance Bank
22 Account Name: Fairmount II LP
23 Account #: XXXXXXXX4528
24 Signatories: JMR
Debra Ann Roth
25 Signatures required: One (1) signature
26 Description: BA2 was maintained for the disbursements of trust funds for a
single beneficiary in connection with RAM's property management
activity. BA2 was used to pay for repairs on the property managed.

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Audit Violations in Audit No. SD220014

11. The audit examinations revealed violations of the Code and the Regulations, as set forth in the following paragraphs, and as more fully discussed in Audit No. SD220014 and the exhibits and work papers attached to the audit report:

Issue One (1). Code Section 10145 and Regulation 2832: Trust Fund Account Designation; Trust Fund Handling

12. Based on an examination of the bank signature cards for BA1 and BA2, BA1 and BA2 were not designated as trust accounts in the name of RAM as trustee, in violation of Code section 10145 and Regulation 2832.

Issue Two (2). Code Section 10145 and Regulation 2834: Handling of Trust Funds; Trust Account Withdrawals

13. Based on an examination of the bank signature cards for BA1 and BA2, RAM allowed Debra Ann Roth (non-licensee) to be an authorized signer on BA1 and BA2, with authority to make withdrawals from BA1 and BA2, during a time that Debra Ann Roth was not licensed by the DRE. RAM did not have fidelity bond or insurance coverage for BA1 and BA2 during the audit period.

14. RAM's acts and/or omissions in authorizing Debra Ann Roth as a signatory on BA1 and BA2 and to make withdrawals from BA1 and BA2, and in failing to have fidelity bond or insurance coverage for BA1 and BA2, are in violation of Code Section 10145 and Regulation 2834.

FIRST CAUSE OF ACCUSATION

AUDIT VIOLATIONS IN AUDIT NO. SD220014

15. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 14 above, with the same force and effect as though fully set forth herein.

16. RAM's acts and/or omissions as described above in paragraphs 12 through 14 violated the Code and the Regulations as set forth below:

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<u>Issue No.</u>	<u>Paragraphs</u>	<u>Violations</u>
1	12	Code section 10145; Regulation 2832
2	13-14	Code section 10145; Regulation 2834

17. The foregoing violations constitute cause for the suspension or revocation of RAM's real estate license and license rights under the provisions of **Code sections 10177(d) and/or 10177(g)**.

SECOND CAUSE OF ACCUSATION: RESPONSIBILITY OF CORPORATE OFFICER IN CHARGE / BROKER SUPERVISION

18. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 17 above, with the same force and effect as though fully set forth herein.

19. Based on the audit findings in Audit No. SD220014 in Issues 1 and 2 as alleged in paragraphs 12 through 14 above, during the period from August 29, 2022, through October 31, 2022, DURSI, as the officer designated by RAM as the person responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the Real Estate Law in violation of **Code section 10159.2**, failed to exercise reasonable supervision over such activities, as described in Issues 1 and 2 above, and constitutes cause for the suspension or revocation of DURSI's real estate license and license rights under the provisions of **Code sections 10177(h), 10177(d) and/or 10177(g)**.

**THIRD CAUSE OF ACCUSATION
REAL ESTATE ACTIVITIES REQUIRING A LICENSE**

20. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 19 above, with the same force and effect as though fully set forth herein.

21. RAM was engaged in property management activities requiring a license under Code section 10131(b) during the period from March 12, 2022, through August 28, 2022. RAM's D.O. was JMR until March 11, 2022, when JMR passed away. According to DRE licensing records, RAM

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1 was not licensed to act through a designated officer from March 12, 2022, through August 28, 2022,
2 and was licensed NBA during this period.

3 22. According to DRE licensing records, RAM did not provide notice of JMR's death
4 and an application for a new designated officer until June 23, 2022, when the DRE received RAM's
5 Corporation License Application seeking to designate DURSI as the new D.O., and a copy of JMR's
6 death certificate. The DRE was unable to process the application until August 29, 2022, because
7 the DRE required RAM to provide the correct licensing fee and a certificate of good standing from
8 the California Secretary of State's Office.

9 23. RAM's acts and/or omissions in performing real estate activities in expectation of
10 compensation during a time period when it was Licensed NBA, including the collection of rents,
11 paying expenses, and receiving management fees, without RAM having its license affiliated with a
12 designated officer, was in violation of **Code section 10130**, and constitutes cause for the suspension
13 or revocation of RAM's real estate license and license rights under the provisions of **Code sections**
14 **10177(d) and/or 10177(g)**.

15 **FOURTH CAUSE OF ACCUSATION**

16 **UNLAWFUL RECEIPT AND PAYMENT OF COMPENSATION**

17 24. The Complainant realleges and incorporates by reference all of the allegations
18 contained in paragraphs 1 through 23 above, with the same force and effect as though fully set forth
19 herein.

20 25. After the death of JMR on March 11, 2022, RAM became licensed NBA, and Debra
21 Roth, the surviving wife of deceased D.O. JMR, who was not licensed by the DRE, and was not an
22 officer of RAM licensed by the DRE, became the unlicensed 100% owner of Roth Asset
23 Management, and sole signatory for BA1 and BA2. From on or about March 12, 2022, through on
24 or about August 28, 2022, while RAM was licensed NBA, Debra Ann Roth collected rents from
25 tenants, managed the properties, wrote checks payable to RAM for the monthly management fee of
26 3.5%, and deposited these fees into BA1.

27 26. Complainant is informed and believes, and on such information and belief, alleges
28 that after depositing into BA1 the checks payable to RAM for the monthly management fee of 3.5%,

1 Debra Ann Roth would then cause an online transfer to be made from BA1 to her own account for
2 an owner's draw from the management fee.

3 27. RAM's acts and/or omissions in accepting property management fees from Debra
4 Ann Roth, a person who is not a licensed real estate broker or salesperson, and RAM's acts and or
5 omissions in compensating Debra Ann Roth, through an owner's draw from the management fee,
6 for performing acts requiring a real estate license, was in violation of Code section 10137 and
7 constitutes cause for the suspension or revocation of RAM's real estate license and license rights
8 under the provisions of Code sections 10177(d) and/or 10177(g).

9 **INVESTIGATION AND ENFORCEMENT COSTS**

10 28. Code section 10106 provides that in any order issued in resolution of a disciplinary
11 proceeding before the Department of Real Estate, the Commissioner may request the administrative
12 law judge to direct a licensee found to have committed a violation of this part to pay a sum not to
13 exceed the reasonable costs of the investigation and enforcement of the case.

14 **AUDIT COSTS**

15 29. Code section 10148(b) provides, in pertinent part, the Commissioner shall charge a
16 real estate broker for the cost of any audit, if the Commissioner has found in a final decision
17 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation or
18 rule of the Commissioner interpreting said section.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
2 this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all the licenses and license rights of ROTH ASSET MANAGEMENT and PETER A.
4 DURSI under the Real Estate Law, for the costs of investigation and enforcement, and audit as
5 permitted by law, and for such other and further relief as may be proper under other applicable
6 provisions of law, and for costs of audit.

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8 Dated June 26, 2023, at San Diego, California.

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12 _____
13 Veronica Kilpatrick
14 Supervising Special Investigator

15 cc: ROTH ASSET MANAGEMENT
16 PETER A. DURSI
17 USAeBroker Inc.
18 La Jolla Partners Inc.
19 Veronica Kilpatrick
20 Sacto.
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