

FILED

SEP 27 2012

DEPARTMENT OF REAL ESTATE
By R. Mat

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
EPIFANY PROPERTIES, INC. and)
RICHARD PATRICK ANTHONY) No. H-4349 SD
ST. ROSE,)
Respondents.)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on August 13, 2012, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondents' express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate licenses and/or license rights on grounds of violations of Sections 10085 (submission of advance fee materials), 10137 (employment and/or compensation of unlicensed persons), 10140.6 (disclosure of license status in advertising), 10145(a) (trust fund handling), 10148 (record retention requirements), 10159.2 (broker supervision), 10161.8 (notification to Department of real estate salesperson employment), 10176(i) (fraud or dishonest dealing), 10177(d) (willful disregard of real estate law), 10177(g) (negligence), 10177(h) (reasonable broker supervision) and 10177(j) (fraud or dishonest dealing) of the California Business and Professions Code ("the Code"), and Sections 2725 (broker supervision), 2773 (disclosure of license identification number on solicitation material), 2831 (maintenance of trust funds), 2831.1 (separate records for each beneficiary or transaction), 2831.2 (trust account reconciliation), 2832 (trust fund handling), 2832.1 (trust account handling for multiple beneficiaries), 2834 (trust account withdrawals), 2835 (commingling) and 2970 (submission of advance fee materials) of the Title 10, Chapter 6, California Code of Regulations ("the Regulations").

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondents.

FINDINGS OF FACT

1

On May 11, 2012, Veronica Kilpatrick made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondents' last known mailing addresses on file with the Department on May 21, 2012.

On August 13, 2012, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondents' default was entered herein.

2

RICHARD PATRICK ANTHONY ST. ROSE ("ST. ROSE") is presently licensed and/or has license rights as a real estate broker. ST. ROSE is also the designated broker/officer for Respondent EPIFANY PROPERTIES, INC. ("EPIFANY").

3

EPIFANY is presently licensed and/or has license rights under the Code as a corporate real estate broker.

4

At all times relevant, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code (broker defined – property management/collection of rent), including the operation and conduct of a property management business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

5

In or about the period of April 11, 2011, and continuing intermittently through May 5, 2011, an audit was conducted of the records of Respondents at their offices located at 1230 Columbia Street #850, San Diego, California, and the Department's Oakland District

Office. The auditor herein examined the records for the period of January 1, 2009, through March 31, 2011 (the audit period).

6

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) in the course of the property management activities described in Paragraph 4, above, and deposited or caused the funds to be deposited into a trust account maintained by Respondents, including:

Bank Account #1

Bank of America
San Diego Main Office
P. O. Box 37176
San Francisco, CA 94137-0176

Account No.: XXXXXX8072

Account Name: Epifany Properties Inc.
c/o 44th Street

Signatories: Unknown

Bank Account #2

Bank of America
San Diego Main Office
P. O. Box 37176
San Francisco, CA 94137-0176

Account No.: XXXXXX8017

Account Name: Epifany Properties Inc.
c/o Adams Ave

Signatories: Unknown

Bank Account #3

Bank of America
San Diego Main Office
P. O. Box 37176
San Francisco, CA 94137-0176

Account No.: XXXXXX2530

Account Name: Epifany Properties Inc.

Signatories: Unknown

Bank Account #4

Bank of America
San Diego Main Office
P. O. Box 37176
San Francisco, CA 94137-0176

Account No.: XXXXXX7758

Account Name: Epifany Properties Inc.
Trust Account

Signatories: Richard St. Rose, REB

Bank Account #5

Wells Fargo Bank
P. O. Box 6995
Portland, OR 97228-6995

Account No.: XXXXXX0416

Account Name: Epifany Properties Inc.
FBO/Tenant Security Deposits

Signatories: Richard St. Rose, REB
Michele Hrivnak, RES

Bank Account #6

Wells Fargo Bank
P. O. Box 6995
Portland, OR 97228-6995

Account No.: XXXXXX5811

Account Name: Epifany Properties Inc.
Primrose Park Investment

Signatories: Richard St. Rose, REB
Michele Hrivnak, RES

Thereafter, Respondents from time-to-time made disbursement of said trust funds.

7

The audit of EPIFANY disclosed that in the course of the activities described in Paragraph 4, above, in connection with providing real property management services:

- (a) On or about August 11, 2010, there was a combined \$207,754.81 shortage for Trust Accounts #3 and #4. EPIFANY did not provide evidence that the

owners of the trust funds had given their written consent allowing it to reduce the balance of the funds in Trust Accounts #3 and #4 to an amount less than the existing aggregate trust fund liabilities.

- (b) On or about August September 30, 2010, there was a \$12,381.11 shortage for Trust Account #5. EPIFANY did not provide evidence that the owners of the trust funds had given their written consent allowing it to reduce the balance of the funds in Trust Account #5 to an amount less than the existing aggregate trust fund liabilities.
- (c) EPIFANY and ST. ROSE allowed trust funds to be used to pay ST. ROSE's personal debts, including, but not limited to, rent on ST. ROSE's personal residence, the purchase of a personal automobile and gambling debts.
- (d) EPIFANY failed to maintain adequate trust account records resulting in an inability by the auditor to conduct a reconciliation of the adjusted bank balance to the accountability of Trust Accounts #1, #2 and #6.
- (e) EPIFANY failed to designate Trust Accounts #1, #2, #3, #4, #5 and #6 as trust accounts.
- (f) EPIFANY failed to maintain adequate Control Records for Trust Accounts #1, #2, #3, #4, #5 and #6.
- (g) EPIFANY failed to maintain a monthly reconciliation of the total of all separate records' balances with the record of all trust funds received and disbursed for Trust Accounts #3 and #4.
- (h) EPIFANY allowed non-licensee Michele Hrivnak to withdraw funds from Trust Accounts #5 and #6 after her real estate salesperson license expired on January 8, 2010, and did not provide adequate fidelity bond coverage for her.
- (i) EPIFANY commingled broker funds with trust funds in Trust Accounts #3 and #4.
- (j) EPIFANY failed to retain both sides of cancelled checks from Trust Account #1 and Trust Account #2.

In connection with the operation and conduct of the real estate management activities described in Paragraph 4, above, EPIFANY engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 of the Code. In collecting such advance fees, EPIFANY used a form of advance fee agreement which had not been provided to the Department for review and approval prior to its use.

9

Breanna Walulik, who has never been licensed by the Department in any capacity, entered into at least three (3) lease/rental agreements on behalf of EPIFANY.

10

EPIFANY failed to notify the Department of its employment of licensee Tim Anspach as a real estate salesperson.

11

EPIFANY failed to disclose its Department license identification number on the website it owned and controlled related to the real estate property management activities.

12

As the designated broker officer for EPIFANY, ST. ROSE was responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. ST. ROSE failed to exercise reasonable supervision and control over the property management brokering activities of EPIFANY. In particular, ST. ROSE permitted, ratified and/or caused the conduct described in Paragraphs 7 through 11, above, to occur, and failed to take reasonable steps, including, but not limited to, the handling of trust funds, supervision of employees and the implementation of policies, rules, procedures and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

DETERMINATION OF ISSUES

1

Cause of disciplinary action against ST. ROSE exists with reference to the facts set out in Paragraph 12, above, for violation of Sections 10159.2, 10177(g) and 10177(h) of the Code and Section 2725 of the Regulations.

2

Cause for disciplinary action against EPIFANY exists with reference to the facts set out in Paragraphs 7 through 11, above, for violation of Sections 10085, 10137, 10140.6, 10145(a), 10148, 10161.8, 10176(i), 10177(d), 10177(g), 10177(h) and 10177(j) the Code, and Sections 2773, 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 2835 and 2970 of the Regulations.

3

The standard of proof applied was clear and convincing proof to a reasonable certainty.

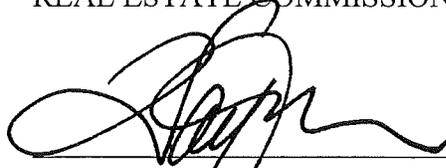
ORDER

All licenses and licensing rights of Respondents RICHARD PATRICK ANTHONY ST. ROSE and EPIFANY PROPERTIES, INC. under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on
OCT 18 2012

DATED: 9/11/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED
AUG 13 2012

DEPARTMENT OF REAL ESTATE
By *R. Mar*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

11 ***

12 In the Matter of the Accusation of)
13 EPIFANY PROPERTIES, INC. and) No. H-4349 SD
14 RICHARD PATRICK ANTHONY) DEFAULT ORDER
15 ST. ROSE,)
16 Respondents.)

17 Respondents, EPIFANY PROPERTIES, INC. and RICHARD PATRICK
18 ANTHONY ST. ROSE, having failed to file a Notice of Defense within the time required by
19 Section 11506 of the Government Code, are now in default. It is, therefore, ordered that a
20 default be entered on the record in this matter.

21 IT IS SO ORDERED August 13, 2012.

22 REAL ESTATE COMMISSIONER

23
24 By: *Joe M. Carrillo*
25 JOE M. CARRILLO
26 Northern Regional Manager
27

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

FILED
MAY 21 2012

4 Telephone: (916) 227-0789 (main)
5 (916) 227-0792 (direct)

DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

12	In the Matter of the Accusation of)	
13)	No. H-4349 SD
14	EPIFANY PROPERTIES, INC. and)	
15	RICHARD PATRICK ANTHONY)	<u>ACCUSATION</u>
16	ST. ROSE,)	
)	
	Respondents.)	

17
18 The Complainant, VERONICA KILPATRICK, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation against RICHARD PATRICK
20 ANTHONY ST. ROSE, ("ST. ROSE"), and EPIFANY PROPERTIES, INC., ("EPIFANY"),
21 (collectively "Respondents"), is informed and alleges as follows:

22 1

23 The Complainant makes this Accusation in her official capacity.

24 2

25 ST. ROSE is licensed by and/or has license rights by the Department of Real
26 Estate ("the Department") as a real estate broker. In addition, ST. ROSE is licensed by the
27 Department as the designated broker/officer of EPIFANY. As the designated broker/officer,

1 ST. ROSE is responsible, pursuant to Section 10159.2 (responsibility of corporate broker in
2 charge of the California Business and Professions Code, (“the Code”), for the supervision of the
3 activities of the officers, agents, real estate licensees and employees of EPIFANY for which a
4 real estate license is required.

5 3

6 EPIFANY is licensed by and/or has license rights by the Department as a
7 corporate real estate broker.

8 4

9 Michele Hrivnak, (“HRIVNAK”), is licensed by and/or has license rights with
10 the Department as a real estate salesperson.

11 5

12 At no time has Breanna Walulik, (“WALULIK”), been licensed by the
13 Department in any capacity.

14 6

15 At all times relevant herein, Respondents engaged in the business of, acted in the
16 capacity of, advertised or assumed to act as a real estate broker within the State of California
17 within the meaning of Section 10131(b) of the Code (broker defined – property
18 management/collection of rent), including the operation and conduct of a property management
19 business with the public, wherein, on behalf of others, for compensation or in expectation of
20 compensation, Respondents leased or rented and offered to lease or rent, and solicited for
21 prospective tenants of real property or improvements thereon, and collected rents from real
22 property or improvements thereon.

23 FIRST CAUSE OF ACTION

24 7

25 In or about the period of April 11, 2011, and continuing intermittently through
26 May 5, 2011, an audit was conducted of the records of Respondents at their offices located at
27 1230 Columbia Street, #850, San Diego, California, and the Department’s Oakland District

1 Office. The auditor herein examined the records for the period of January 1, 2009, through
2 March 31, 2011 (the audit period).

3 8

4 While acting as a real estate broker as described in Paragraph 6, above, and
5 within the audit period, Respondents accepted or received funds in trust (trust funds) in the
6 course of the property management activities described in Paragraph 6, above, and deposited or
7 caused the funds to be deposited into a trust account maintained by Respondents, including:

8 Bank Account #1

9 Bank of America
10 San Diego Main Office
11 P. O. Box 37176
12 San Francisco, CA 94137-0176

13 Account No.: XXXXXX8072

14 Account Name: Epifany Properties Inc.
15 c/o 44th Street

16 Signatories: Unknown

17 Bank Account #2

18 Bank of America
19 San Diego Main Office
20 P. O. Box 37176
21 San Francisco, CA 94137-0176

22 Account No.: XXXXXX8017

23 Account Name: Epifany Properties Inc.
24 c/o Adams Ave

25 Signatories: Unknown

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Bank Account #3

Bank of America
San Diego Main Office
P. O. Box 37176
San Francisco, CA 94137-0176

Account No.: XXXXXX2530

Account Name: Epifany Properties Inc.

Signatories: Unknown

Bank Account #4

Bank of America
San Diego Main Office
P. O. Box 37176
San Francisco, CA 94137-0176

Account No.: XXXXXX7758

Account Name: Epifany Properties Inc.
Trust Account

Signatories: Richard St. Rose, REB

Bank Account #5

Wells Fargo Bank
P. O. Box 6995
Portland, OR 97228-6995

Account No.: XXXXXX0416

Account Name: Epifany Properties Inc.
FBO/Tenant Security Deposits

Signatories: Richard St. Rose, REB
Michele Hrivnak, RES

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Bank Account #6

Wells Fargo Bank
P. O. Box 6995
Portland, OR 97228-6995

Account No.: XXXXXX5811

Account Name: Epifany Properties Inc.
Primrose Park Investment

Signatories: Richard St. Rose, REB
Michele Hrivnak, RES

Thereafter, Respondents from time-to-time made disbursement of said trust funds.

9

The audit of EPIFANY disclosed that in the course of the activities described in Paragraph 6, above, in connection with providing real property management services:

(a) On or about August 11, 2010, there was a combined \$207,754.81 shortage for Trust Accounts #3 and #4. EPIFANY did not provide evidence that the owners of the trust funds had given their written consent allowing it to reduce the balance of the funds in Trust Accounts #3 and #4 to an amount less than the existing aggregate trust fund liabilities. Such acts and/or omissions by EPIFANY violate Section 10145 (handling of trust funds) of the Code and Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code of Regulations (“the Regulations”).

(b) On or about August September 30, 2010, there was a \$12,381.11 shortage for Trust Account #5. EPIFANY did not provide evidence that the owners of the trust funds had given their written consent allowing it to reduce the balance of the funds in Trust Account #5 to an amount less than the existing aggregate trust fund liabilities. Such acts and/or omissions by EPIFANY violate Section 10145 of the Code and Section 2832.1 of the Regulations.

- 1 (c) EPIFANY and ST. ROSE allowed trust funds to be used to pay ST. ROSE's
2 personal debts, including, but not limited to, rent on ST. ROSE's personal
3 residence, the purchase of a personal automobile and gambling debts. Such
4 acts and/or omissions by EPIFANY and ST. ROSE are grounds for discipline
5 under Section 10176(i) (fraud or dishonest dealing) of the Code.
- 6 (d) EPIFANY failed to maintain adequate trust account records resulting in an
7 inability by the auditor to conduct a reconciliation of the adjusted bank
8 balance to the accountability of Trust Accounts #1, #2 and #6. Such acts
9 and/or omissions by EPIFANY violate of Sections 10145 and 10177(d) of
10 the Code, and Sections 2831 (trust fund records maintenance), 2831.1
11 (separate beneficiary records) and 2831.2 (trust account reconciliation) of the
12 Regulations.
- 13 (e) EPIFANY failed to designate Trust Accounts #1, #2, #3, #4, #5 and #6 as
14 trust accounts. Such acts and/or omissions by EPIFANY violate Section
15 10145 of the Code and Section 2832 (trust fund handling) of the Regulations.
- 16 (f) EPIFANY failed to maintain adequate Control Records for Trust Accounts
17 #1, #2, #3, #4, #5 and #6. Such acts and/or omissions by EPIFANY violate
18 Section 2831 of the Regulations.
- 19 (g) EPIFANY failed to maintain a monthly reconciliation of the total of all
20 separate records' balances with the record of all trust funds received and
21 disbursed for Trust Accounts #3 and #4. Such acts and/or omissions by
22 EPIFANY violate Section 10145 of the Code and Section 2831.2 of the
23 Regulations.
- 24 (h) EPIFANY allowed non-licensee Michele Hrivnak to withdraw funds from
25 Trust Accounts #5 and #6 after her real estate salesperson license expired on
26 January 8, 2010, and did not provide adequate fidelity bond coverage for her.

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The acts and/or omissions of EPIFANY as alleged in Paragraph 11, above, are grounds for the revocation or suspension of EPIFANY's real estate license or license rights under Sections 10177(j) (fraud or dishonest dealing), and 10177d) and/or 10177(g) of the Code.

THIRD CAUSE OF ACTION

14

Breanna Walulik, who has never been licensed by the Department in any capacity, entered into at least three (3) lease/rental agreements on behalf of EPIFANY.

15

The acts and/or omissions by EPIFANY as alleged in Paragraph 14, above, violate Section 10137 (employment/compensation of unlicensed persons) of the Code.

16

The acts and/or omissions by EPIFANY as alleged in Paragraph 14, above, are grounds for discipline under Sections 10177(d) and/or 10177(g) of the Code.

FOURTH CAUSE OF ACTION

17

EPIFANY failed to notify the Department of its employment of licensee Tim Wayne Anspach as a real estate salesperson.

18

The acts and/or omissions of EPIFANY as alleged in Paragraph 17, above, violate Section 10161.8 (notification to Department of real estate salesperson employment) of the Code.

19

The acts and/or omissions of EPIFANY as alleged in Paragraph 17, above, are grounds for discipline under Sections 10177(d) and/or 10177(g) of the Code.

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1 FIFTH CAUSE OF ACTION

2 20

3 EPIFANY failed to disclose its Department license identification number on the
4 website it owned and controlled related to the real estate property management activities, as set
5 forth in Paragraph 6, above.

6 21

7 The acts and/or omissions of EPIFANY as alleged in Paragraph 20, above,
8 violate Section 10140.6 (disclosure of license status in advertising) of the Code and Section
9 2773 (disclosure of license identification number on solicitation material) of the Regulations.

10 22

11 The acts and/or omissions of EPIFANY as alleged in Paragraph 20, above, are
12 grounds for discipline under Sections 10177(d) and/or 10177(g) of the Code.

13 SIXTH CAUSE OF ACTION

14 23

15 At all times relevant herein, ST. ROSE was responsible, as the designated
16 broker/officer for EPIFANY, for the supervision and control of the activities conducted on
17 behalf of the corporation by its officers and employees. ST. ROSE failed to exercise reasonable
18 supervision and control over the property management brokering activities of EPIFANY. In
19 particular, ST. ROSE permitted, ratified and/or caused the conduct described in the First,
20 Second and Third Causes of Action, above, to occur, and failed to take reasonable steps,
21 including, but not limited to, the handling of trust funds, supervision of employees and the
22 implementation of policies, rules, procedures and systems to ensure the compliance of the
23 corporation with the Real Estate Law and the Regulations.

24 24

25 The acts and/or omissions of ST. ROSE, alleged in Paragraph 23, above, violate
26 Section 10159.2 of the Code and Section 2725 of the Regulations (broker supervision).

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The acts and/or omissions of ST. ROSE, alleged in Paragraph 23, above, constitute grounds for disciplinary action under Sections 10177(d) and/or 10177(g), and 10177(h) (reasonable supervision responsibility of broker) of the Code.

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation, and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Code, for the reasonable cost of investigation and prosecution of this case, including agency attorney's fees, and for such other and further relief as may be proper under applicable provisions of law.


VERONICA KILPATRICK
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 11 day of May, 2012.