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FILED

MAR 15 2018

BUREAU OF REAL ESTATE

By Rea

9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 ROTH & MILLER REALTY, INC., and DAVID)
14 MICHAEL ROTH,)

15 Respondents.)

CalBre No. H-6657 SAC

ACCUSATION

16 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
17 of the State of California, for cause of Accusation against ROTH & MILLER REALTY, INC.,
18 and DAVID MICHAEL ROTH (collectively "Respondents"), are informed and allege as
19 follows:

20 PRELIMINARY ALLEGATIONS

21 1

22 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
23 of the State of California, makes this Accusation in her official capacity.

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25 Respondents are presently licensed and/or has license rights under the Real
26 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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3 At all times mentioned, Respondent ROTH & MILLER REALTY, INC. (R&M)
4 was and is licensed by the State of California Bureau of Real Estate (Bureau) as a real estate
5 broker corporation.

6 4

7 At all times mentioned, Respondent DAVID MICHAEL ROTH (ROTH) was and
8 is licensed by the Bureau individually as a real estate broker, and as the designated broker officer
9 of R&M. As said designated broker officer, ROTH was responsible pursuant to Section 10159.2
10 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and
11 employees of R&M for which a license is required.

12 5

13 Whenever reference is made in an allegation in this Accusation to an act or
14 omission of R&M, such allegation shall be deemed to mean that the officers, directors,
15 employees, agents and real estate licensees employed by or associated with R&M committed
16 such acts or omissions while engaged in furtherance of the business or operation of R&M and
17 while acting within the course and scope of their corporate authority and employment.

18 6

19 At all times mentioned, Respondents engaged in the business of, acted in the
20 capacity of, advertised, or assumed to act as real estate brokers in the State of California, within
21 the meaning of Section 10131(b) of the Code in the operation and conduct of a property
22 management business with the public wherein, on behalf of others, for compensation or in
23 expectation of compensation, Respondents leased or rented and offered to lease or rent, and
24 placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of
25 real property or improvements thereon, and collected rents from real property or improvements
26 thereon.

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2 FIRST CAUSE OF ACTION

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4 Each and every allegation in Paragraphs 1 through 6, inclusive, is incorporated by
5 this reference as if fully set forth herein.

6 8

7 On or about February 21, 2017, and continuing intermittently through
8 May 16, 2017, an audit was conducted of the records of R&M. The auditor herein examined the
9 records for the period of January 1, 2016, through December 31, 2016.

10 9

11 While acting as a real estate broker as described in Paragraph 6, Respondents
12 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
13 connection with the leasing, renting, and collection of rents on real property or improvements
14 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
15 funds.

16 10

17 The trust funds accepted or received by Respondents as described in Paragraph 9
18 were deposited or caused to be deposited by Respondents into trust accounts which were
19 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time
20 Respondents made disbursements of said trust funds, identified as follows:

21

ACCOUNT # 1	
23 Bank Name and Location:	Bank of the West 330 Davis Street Vacaville, CA 95688
25 Account No.:	XXX-XX5600
26 Entitled:	Roth & Miller Realty, Inc. Trust Account

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In the course of the activities described in Paragraph 6, Respondents:

(a) caused, suffered, or permitted the combined balance of funds in Account #1 to be reduced to an amount which, as of December 31, 2016, was approximately \$19,718.35 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (Regulations);

(b) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Account #1, containing all of the information required by Section 2831.1 of the Regulations;

(c) failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for Trust Account #1, Bank Account #1, and Bank Account #2, as required by Section 2831.2 of the Regulations; and

(d) commingled with its own money or property, the money or property of others which was received or held by Respondents in trust in violation of Section 10176(e) of the Code;

12

The facts alleged in the First Cause of Action are grounds for the suspension or revocation of Respondents' licenses and license rights under the following Sections of the Code and Regulations:

As to Paragraph 11(a), under Section 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

1 As to Paragraph 11(b), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations; and

3 As to Paragraph 11(c), under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations; and

5 As to Paragraph 11(d), under Section 10176(e).

6 SECOND CAUSE OF ACTION

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8 Each and every allegation in Paragraphs 1 through 12, inclusive, is incorporated
9 by this reference as if fully set forth herein.

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11 Respondent ROTH failed to exercise reasonable supervision over the acts of
12 R&M in such a manner as to allow the acts and events described above to occur.

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14 The acts and/or omissions of ROTH as described in Paragraph 14, constitutes
15 failure on the part of ROTH, as designated broker-officer for R&M, to exercise reasonable
16 supervision and control over the licensed activities of R&M as required by Section 10159.2 of
17 the Code and Section 2725 of the Regulations.

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19 The facts described above as to the Second Cause of Action constitute cause for
20 the suspension or revocation of the licenses and license rights of Respondent ROTH under
21 Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in
22 conjunction with Section 10177(d) of the Code.

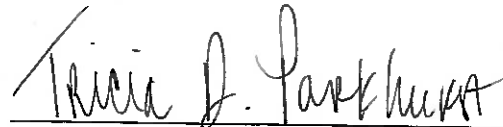
23 COST RECOVERY

24 17

25 The acts and/or omissions of Respondents as alleged above, entitle the Bureau to
26 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
27 handling violation) of the Code.

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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 discipline on all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation and enforcement of this case as permitted by law, for the cost of the Bureau's audit as permitted by law, and for such other and further relief as may be proper under the provisions of law.


TRICIA D. PARKHURST
Supervising Special Investigator

Dated at Oakland, California,
this 13th day of March, 2018

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, the Bureau of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Bureau of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.