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2 Department of Real Estate
3 P.O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 576-8700

FILED

JUL 31 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

12 ROTH & MILLER REALTY, INC. and
13 DAVID MICHAEL ROTH,

14 Respondents.

No. H-6657 SAC

STIPULATION AND
AGREEMENT

15 It is hereby stipulated by and between ROTH & MILLER REALTY, INC. and
16 DAVID MICHAEL ROTH (Respondents), represented by Shannon B. Jones, and the
17 Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real
18 Estate (Department), as follows for the purpose of settling and disposing the Accusation filed
19 on March 15, 2018, in this matter:

20 1. All issues which were to be contested and all evidence which was to be
21 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
22 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
23 shall instead and in place thereof be submitted solely on the basis of the provisions of this
24 Stipulation and Agreement.

25 2. Respondents have received, read, and understand the Statement to
26 Respondent, and the Discovery Provisions of the APA filed by the Department in this
27 proceeding.

1 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
2 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
3 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
4 acknowledge that Respondents understand that by withdrawing said Notice of Defense
5 Respondents will thereby waive Respondents' rights to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA, and that Respondents will waive other rights
8 afforded to Respondents in connection with the hearing such as the right to present evidence in
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

10 4. This Stipulation and Agreement is based on the factual allegations
11 contained in the Accusation. In the interest of expediency and economy, Respondents choose not
12 to contest these factual allegations, but to remain silent and understands that, as a result thereof,
13 these factual statements will serve as a prima facie basis for the "Determination of Issues" and
14 "Order" set forth below. The Commissioner shall not be required to provide further evidence to
15 prove such allegations.

16 5. This Stipulation and Agreement and Respondents' decision not to contest
17 the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and
18 are expressly limited to this proceeding and any other proceeding or case in which the
19 Department, the state or federal government, an agency of this state, or an agency of another state
20 is involved.

21 6. Respondents understand that by agreeing to this Stipulation and
22 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and
23 Professions Code (Code), the cost of the audit, which resulted in the determination that
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.
25 The amount of said costs is \$5,646.79.

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1 7. Respondents further understand that by agreeing to this Stipulation and
2 Agreement, the findings set forth below in the Determination of Issues become final, and that
3 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
4 Section 10148 of the Code to determine if the violations have been corrected. The maximum
5 costs of said audit shall not exceed \$7,058.49.

6 8. It is understood by the parties that the Commissioner may adopt the
7 Stipulation and Agreement as his decision in this matter thereby imposing the penalty and
8 sanctions on the real estate licenses and license rights of Respondents as set forth in the below
9 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and
10 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
11 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
12 any admission or waiver made herein.

13 9. The Order or any subsequent Order of the Commissioner made pursuant to
14 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
15 administrative or civil proceedings by the Department with respect to any matters which were not
16 specifically alleged to be causes for action in Accusation H-6657 SAC.

17 * * *

18 DETERMINATION OF ISSUES

19 By reason of the foregoing stipulations and waivers and solely for the purpose of
20 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
21 following determination of issues shall be made:

22 I

23 The acts and omissions of Respondents as described in the First Cause of Action
24 in the Accusation are grounds for the suspension or revocation of Respondents' licenses and
25 license rights under the following sections of the Code and Title 10 of the California Code of
26 Regulations (Regulations):

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

3 As to Paragraph 11(b), under Section 10177(d) of the Code in conjunction with
4 Section 10145 of the Code and Section 2831.1 of the Regulations; and

5 As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with
6 Section 10145 of the Code and Section 2831.2 of the Regulations; and

7 As to Paragraph 11(d), under Section 10176(e) of the Code.

8 II

9 The acts and omissions of Respondent DAVID MICHAEL ROTH (ROTH) as
10 described in the Second Cause of Action in the Accusation are grounds for the suspension or
11 revocation of ROTH's licenses and license rights Section 10177(h) of the Code.

12 * * *

13 ORDER

14 I

15 All licenses and licensing rights of Respondent ROTH & MILLER REALTY,
16 INC. (R&M) under the Real Estate Law are suspended for a period of sixty (60) days from the
17 effective date of this Order; provided, however, that:

18 1) Thirty (30) days of said suspension shall be stayed, upon the condition that R&M
19 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
20 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty
21 of \$1,500.

22 a) Said payment shall be in the form of a cashier's check made payable to the
23 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
24 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
25 Order.

26 b) No further cause for disciplinary action against the Real Estate licenses of R&M
27 occurs within two (2) years from the effective date of the decision in this matter.

1 c) If R&M fails to pay the monetary penalty as provided above prior to the effective
2 date of this Order, the stay of the suspension shall be vacated as to R&M and the order of
3 suspension shall be immediately executed, under this Order, in which event R&M shall not be
4 entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department
5 under the terms of this Order.

6 d) If R&M pays the monetary penalty and any other moneys due under this
7 Stipulation and Agreement and if no further cause for disciplinary action against the real estate
8 license of R&M occurs within two (2) years from the effective date of this Order, the entire stay
9 hereby granted this Order, as to R&M only, shall become permanent.

10 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the
11 following terms and conditions:

12 a) R&M shall obey all laws, rules and regulations governing the rights, duties and
13 responsibilities of a real estate licensee in the State of California; and,

14 b) That no final subsequent determination be made, after hearing or upon stipulation,
15 that cause for disciplinary action occurred within two (2) years from the effective date of this
16 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
17 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
18 such determination be made, the stay imposed herein shall become permanent.

19 II

20 All licenses and licensing rights of ROTH under the Real Estate Law are
21 suspended for a period of sixty (60) days from the effective date of this Order; provided,
22 however, that:

23 1) Thirty (30) days of said suspension shall be stayed, upon the condition that ROTH
24 petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
25 10175.2 of the Code at a rate of \$50 for each day of the suspension for a total monetary penalty
26 of \$1,500.

1 a) Said payment shall be in the form of a cashier's check made payable to the
2 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
3 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
4 Order.

5 b) No further cause for disciplinary action against the Real Estate licenses of ROTH
6 occurs within two (2) years from the effective date of the decision in this matter.

7 c) If ROTH fails to pay the monetary penalty as provided above prior to the effective
8 date of this Order, the stay of the suspension shall be vacated as to ROTH and the order of
9 suspension shall be immediately executed, under this Order, in which event ROTH shall not be
10 entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department
11 under the terms of this Order.

12 d) If ROTH pays the monetary penalty and any other moneys due under this
13 Stipulation and Agreement and if no further cause for disciplinary action against the real estate
14 license of ROTH occurs within two (2) years from the effective date of this Order, the entire stay
15 hereby granted this Order, as to ROTH only, shall become permanent.

16 2) Thirty (30) days of said suspension shall be stayed for two (2) years upon the
17 following terms and conditions:

18 a) ROTH shall obey all laws, rules and regulations governing the rights, duties and
19 responsibilities of a real estate licensee in the State of California; and,

20 b) That no final subsequent determination be made, after hearing or upon stipulation,
21 that cause for disciplinary action occurred within two (2) years from the effective date of this
22 Order. Should such a determination be made, the Commissioner may, in his discretion, vacate
23 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no
24 such determination be made, the stay imposed herein shall become permanent.

25 3) All licenses and licensing rights of ROTH are indefinitely suspended unless or
26 until ROTH provides proof satisfactory to the Commissioner, of having taken and successfully
27 completed the continuing education course on trust fund accounting and handling specified in

1 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these
2 requirements includes evidence that ROTH has successfully completed the trust fund account
3 and handling continuing education course, no earlier than 120 days prior to the effective date of
4 the Decision and Order in this matter. Proof of completion of the trust fund accounting and
5 handling course must be delivered to the Department of Real Estate, Flag Section at P.O. Box
6 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of
7 this Decision and Order.

8 4) ROTH shall, within six (6) months from the effective date of this Decision and
9 Order, take and pass the Professional Responsibility Examination administered by the
10 Department including the payment of the appropriate examination fee. If ROTH fails to satisfy
11 this condition, ROTH's real estate license shall automatically be suspended until ROTH passes
12 the examination.

13 III

14 1. Pursuant to Section 10148 of the Code, Respondents shall pay the sum of
15 \$5,646.79 for the Commissioner's cost of the audit which led to this disciplinary action.
16 Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the
17 Commissioner. Payment of audit costs should not be made until Respondents receive the
18 invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein.
19 Respondents' real estate license shall automatically be suspended until payment is made in full,
20 or until a decision providing otherwise is adopted following a hearing held pursuant to this
21 condition.

22 2. Pursuant to Section 10148 of the Code, Respondents shall pay the
23 Commissioner's reasonable cost, not to exceed \$7,058.49, for an audit to determine if
24 Respondents have corrected the violation(s) found in the Determination of Issues. In calculating
25 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
26 average hourly salary for all persons performing audits of real estate brokers, and shall include an
27 allocation for travel time to and from the auditor's place of work. Respondents shall pay such

1 costs within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment
2 of the audit costs should not be made until Respondents receive the invoice. If Respondents fail
3 to satisfy this condition in a timely manner as provided for herein, Respondents' real estate
4 license shall automatically be suspended until payment is made in full, or until a decision
5 providing otherwise is adopted following a hearing held pursuant to this condition.

7 2 July 19
8 DATED

TS
TRULY SUGHRUE
Counsel for Complainant
* * *

10 I have read the Stipulation and Agreement, discussed it with my counsel, and its
11 terms are understood by me and are agreeable and acceptable to me. I understand that I am
12 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
13 intelligently and voluntarily waive those rights, including the right of requiring the
14 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
15 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
16 the charges.

17 Respondents and Respondents' attorney further agree to send the original signed
18 Stipulation by mail to the following address no later than one (1) week from the date the
19 Stipulation is signed by Respondents and Respondents' attorney: *Department of Real Estate,*
20 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondents and
21 Respondents' attorney understand and agree that if they fail to return the original signed
22 Stipulation by the due date, Complainant retains the right to set this matter for hearing.

24 6-10-19
25 DATED

David Michael Roth
David Michael Roth,
Designated Officer
ROTH & MILLER REALTY, INC.,
Respondent

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6-10-19
DATED


DAVID MICHAEL ROTH
Respondent

*I have reviewed the Stipulation and Agreement as to form and content and have
advised my clients accordingly.*

DATED

SHANNON B. JONES
Attorney for Respondents

The foregoing Stipulation and Agreement is hereby adopted as my Decision and
Order and shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED _____.

REAL ESTATE COMMISSIONER

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6-10-19
DATED


DAVID MICHAEL ROTH
Respondent

*I have reviewed the Stipulation and Agreement as to form and content and have
advised my clients accordingly.*

June 10, 2019
DATED


SHANNON B. JONES
Attorney for Respondents

The foregoing Stipulation and Agreement is hereby adopted as my Decision and
Order and shall become effective at 12 o'clock noon on AUG 21 2019

IT IS SO ORDERED July 29, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

