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FILED

MAR 21 2023

DEPARTMENT OF REAL ESTATE

By

B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

ROTH & MILLER REALTY, INC.;

and

DAVID MICHAEL ROTH, individually and as
designated officer of Roth & Miller Realty,
Inc.,

Respondents.

No. H-7033 SAC

FIRST AMENDED
ACCUSATION

The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
of the State of California, for cause of Accusation against ROTH & MILLER REALTY, INC.
and DAVID MICHAEL ROTH (collectively referred to as "Respondents"), is informed and
alleges as follows:

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

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1 PRELIMINARY ALLEGATIONS

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

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6 At all times mentioned, Respondent ROTH & MILLER REALTY, INC. (R&M)
7 was and is licensed by the Department as a real estate corporate broker, License ID 00616732.
8 R&M was licensed by the Department as a real estate corporation on or about August 31, 1977.
9 Unless renewed, R&M corporate broker license will expire November 30, 2025.

10 Effective August 21, 2019, in Case No. H-6657 SAC before the Department, the
11 Real Estate Commissioner issued an order suspending the real estate corporate broker license of
12 R&M for 60-days stayed upon terms and conditions, for violation of Business and Professions
13 Code (Code) Sections 10177(d) and 10176(e).

14 At all times mentioned, DAVID MICHAEL ROTH (ROTH) was licensed by the
15 Department as the designated broker officer of R&M. As said designated officer-broker, ROTH
16 was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of
17 the officers, agents, real estate licensees, and employees of R&M for which a license is required.

18 At all times mentioned, ROTH was 100 percent shareholder and President of
19 R&M.

20 4

21 At all times mentioned, Respondent ROTH was and is licensed by the Department
22 as the designated officer of R&M. Unless renewed ROTH's designated officer license expires
23 November 30, 2025.

24 ROTH was and is licensed as an individual real estate broker, License ID
25 00580170, from March 20, 1979 to March 19, 2019, and from March 23, 2021 to present.
26 Unless renewed ROTH's broker license expires March 22, 2025.

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1 Effective August 21, 2019, in Case No. H-6657 SAC before the Department, the
2 Real Estate Commissioner issued an order suspending the real estate broker license of ROTH
3 for 60-days stayed upon terms and conditions, for violation of Business and Professions Code
4 (Code) Sections 10177(d), 10176(e), and 10177(h).

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

11 AUDIT SC21-0044

12 6

13 On or about April 27, 2022, the Department completed its audit (SC21-0044) of
14 the books and records of R&M property management activities described in Paragraph 7. The
15 auditor herein examined the records for the period of January 1, 2019, through January 31, 2020.

16 7

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

24 As of the audit examination, Respondents managed forty (40) properties with
25 forty-five (45) units for approximately thirty (30) owners. Respondents collected approximately
26 \$695,000 in trust funds annually.

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Respondents' property management services include, but not limited to, collecting rents, paying expenses, and screening tenants. For such property management services, Respondents charged a management fee of 8 to 10 percent of collected rents.

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While acting as a real estate broker as described in Paragraph 7, Respondents accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time-to time made disbursements of said trust funds.

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

ACCOUNT # 1	
Bank Name and Location:	Bank of the West P.O. Box 2830 Vacaville, CA 95688
Account No.:	XXXXXX6291
Account Name:	Roth & Miller Realty Inc R FNDS
Signatories:	ROTH Marshia Webb
Purpose:	Account #1 was used for the handling of trust funds from property management activities. Deposits consisted of rent and security deposit payments and owner contributions. Disbursements consisted of owner proceeds, security deposit

	disposition, repairs and maintenance payments, and management fees.
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In the course of the property management activities described in Paragraph 7, and during the audit examination period described in Paragraph 6, Respondents violated the Code and Regulations described below:

Trust Account Reconciliation

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Respondents 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 Account #1 as required by Section 2831.2 of the Regulations.

Control Record

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Respondents failed to maintain an accurate written control record, for Account #1, of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations.

R&M failed to maintain a control record for Account #1. ROTH confirmed that the software was not able to provide a control record.

FAILURE TO SUPERVISE

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

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The acts and/or omissions of ROTH as described in Paragraph 11, constitutes failure on the part of ROTH, as designated broker-officer for R&M, to exercise reasonable

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supervision and control over the licensed activities of R&M as required by Section 10159.2 of the Code and Section 2725 of the Regulations.

GRUNDS FOR DISCIPLINE

14

The acts and/or omissions of Respondents as alleged in the above constitute grounds for the suspension or revocation of all licenses and license rights of Respondents, pursuant to the following provisions of the Code and Regulations:

As to Paragraph 10, under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 2831.2 of the Regulations; and

As to Paragraph 11, under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 2831 of the Regulations.

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The acts and/or omissions of ROTH as alleged in Paragraphs 12 and 13 constitute grounds for the suspension or revocation of all licenses and license rights of ROTH under Sections 10177(g) and/or 10177(h) of the Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

COST RECOVERY

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The acts and/or omissions of Respondents as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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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

1 action against all licenses and license rights of Respondent under the Code, for the cost of
2 investigation and enforcement as permitted by law, and for such other and further relief as may
3 be proper under the provisions of law.

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6 TRICIA D. PARKHURST
7 Supervising Special Investigator

8 Dated at Sacramento, California,
9 this 13th day of March, 2023

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11 DISCOVERY DEMAND

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