

Department of Real Estate
P.O. Box 137007
Sacramento, CA 95813-7007

Telephone: (916) 576-8700

FILED

NOV 14 2023

DEPARTMENT OF REAL ESTATE
By B. A. Chittas

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

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between ROTH & MILLER REALTY, INC. (R&M), and DAVID MICHAEL ROTH (ROTH) (collectively "Respondents"), represented by Shannon B. Jones, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate (Department), as follows for the purpose of settling and disposing of the First Amended Accusation (Accusation) filed on March 21, 2023, in this matter:

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

1 this Stipulation and Agreement.

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

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

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

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

25 6. Respondents further understand that by agreeing to this Stipulation and
26 Agreement, the findings set forth below in the Determination of Issues become final, and that
27 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant

1 to Section 10148 of the Code to determine if the violations have been corrected. The maximum
2 costs of said audit shall not exceed \$6,058.75.

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

10 8. The Order or any subsequent Order of the Commissioner made pursuant to
11 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
12 administrative or civil proceedings by the Department with respect to any matters which were
13 not specifically alleged to be causes for action in Accusation H-7033 SAC.

14 * * *

15 DETERMINATION OF ISSUES

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

19 I

20 The acts and omissions of Respondents as described in the Accusation are
21 grounds for the suspension or revocation of Respondents' licenses and license rights under the
22 following sections of the Code and Title 10, Chapter 6, of the California Code of Regulations
23 (Regulations):

24 As to Paragraph 10, under Section 10177(d) of the Code in conjunction with
25 Section 2831.2 of the Regulations; and

26 As to Paragraph 11, under Section 10177(d) of the Code in conjunction with
27 Section 2831 of the Regulations.

II

The acts and/or omissions of ROTH as described in the Accusation is cause for the suspension or revocation of ROTH'S license and/or license rights under Section 10177(h) of the Code.

* * *

ORDER

I

All licenses and licensing rights of Respondent R&M under the Real Estate Law are revoked; provided, however, a restricted real estate corporate broker license shall be issued to R&M pursuant to Section 10156.5 of the Code if R&M makes application therefor and pays to the Department the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order. The restricted license issued to R&M shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to R&M may be suspended prior to hearing by Order of the Commissioner in the event of R&M's conviction or plea of nolo contendere to a crime which is substantially related to R&M's fitness or capacity as a real estate licensee.

2. The restricted license issued to R&M may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that R&M has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attaching to the restricted license.

3. R&M shall not be eligible to apply for the issuance of an unrestricted real estate license nor for removal of any of the conditions, limitations, or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision and Order. R&M shall not be eligible to apply for any unrestricted licenses until all restrictions attaching to the license have been removed.

II

All licenses and licensing rights of Respondent ROTH under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to ROTH pursuant to Section 10156.5 of the Code if ROTH makes application therefor and pays to the Department the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order. The restricted license issued to ROTH shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to ROTH may be suspended prior to hearing by Order of the Commissioner in the event of ROTH's conviction or plea of nolo contendere to a crime which is substantially related to ROTH's fitness or capacity as a real estate licensee.

2. The restricted license issued to ROTH may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that ROTH has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attaching to the restricted license.

3. ROTH shall not be eligible to apply for the issuance of an unrestricted real estate license nor for removal of any of the conditions, limitations, or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision and Order. ROTH shall not be eligible to apply for any unrestricted licenses until all restrictions attaching to the license have been removed.

4. ROTH shall not engage in or perform any property management activities, under his individual broker license, as the designated officer of a real estate corporation, and/or as a broker associate under another brokerage, during the period Respondent holds a restricted license.

5. ROTH shall, within nine (9) months from the effective date of this Decision and Order, present evidence satisfactory to the Commissioner that ROTH has, since the most recent issuance of an original or renewal real estate license, taken and successfully

completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If ROTH fails to satisfy this condition, ROTH' real estate license shall automatically be suspended until ROTH presents evidence satisfactory to the Commissioner of having taken and successfully completed the continuing education requirements. Proof of completion of the continuing education courses must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

6. All licenses and licensing rights of ROTH are indefinitely suspended unless or until ROTH provides proof satisfactory to the Commissioner, of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of these requirements includes evidence that ROTH has successfully completed the trust fund account and handling continuing education courses, no earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of completion of the trust fund accounting and handling course must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date.

III

1. Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's reasonable cost, not to exceed \$6,058.75, for an audit to determine if Respondents have corrected the violation(s) found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such costs within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be made until Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents' real estate license shall automatically be suspended until payment is made in full, or until a decision

1 providing otherwise is adopted following a hearing held pursuant to this condition.

2
3 18 July 2023

4 DATED



TRULY SUGHRUE
Counsel for Complainant

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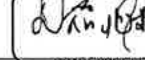
6
7 I have read the Stipulation and Agreement, discussed it with my counsel, and its
8 terms are understood by me and are agreeable and acceptable to me. I understand that I am
9 waiving rights given to me by the California Administrative Procedure Act, and I willingly,
10 intelligently and voluntarily waive those rights, including the right of requiring the
11 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
12 right to cross-examine witnesses against me and to present evidence in defense and mitigation of
13 the charges.

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

21 7/14/2023

22 DATED

DocuSigned by:

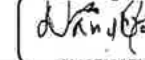


6840F080F0E5473
David Michael Roth, Designated Officer
ROTH & MILLER REALTY, INC.,
Respondent

23
24 7/14/2023

25 DATED

DocuSigned by:



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DAVID MICHAEL ROTH
Respondent

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