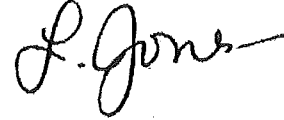


FILED

May 8, 2014

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Bureau of Real Estate
4 P.O. Box 137007
5 Sacramento, CA 95813-7007

BUREAU OF REAL ESTATE



By _____

6 Telephone: (916) 263-8672
7 (916) 263-8676 (Direct)
8
9 Fax: (916) 263-3767

10 BEFORE THE BUREAU OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of)

14 TOGNOLI & SCOTT INC.)
15 and DANIEL ARTHUR SCOTT,)

No. H-6126 SAC

ACCUSATION

16 Respondents.)

17 The Complainant, TRICIA PARKHURST, a Deputy Real Estate Commissioner
18 of the State of California, for cause of Accusation against TOGNOLI & SCOTT INC. and
19 DANIEL SCOTT (Respondents), is informed and alleges as follows:

20 PRELIMINARY ALLEGATIONS

21 1

22 The Complainant, TRICIA PARKHURST, a Deputy Real Estate Commissioner
23 of the State of California, makes this Accusation in her official capacity.

24 2

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

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3

At all times mentioned, Respondent TOGNOLI & SCOTT INC. (TSI) was and is licensed by the State of California Bureau of Real Estate (Bureau) as a real estate broker corporation.

4

At all times mentioned, Respondent DANIEL ARTHUR SCOTT (SCOTT) was and is licensed by the Bureau individually as a real estate broker, and as the designated broker officer of TSI. As said designated officer-broker, SCOTT was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of TSI for which a license is required.

5

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

6

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(b) of the Code in 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 placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

///
///

1 FIRST CAUSE OF ACTION

2 7

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

5 8

6 On or about February 18, 2014, and continuing intermittently through February
7 26, 2014, an audit was conducted of the records of TSI. The auditor herein examined the records
8 for the period of January 1, 2012, through January 31, 2014.

9 9

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

15 10

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

20

ACCOUNT # 1	
21 Bank Name and Location:	Bank of the West 4300 Sonoma Blvd., Suite 300 22 Vallejo, CA 94589
23 Account No.:	XXXXXX0520
24 Entitled:	Tognoli & Scott Inc. dba Elite Property Management Trust Funds

25
26
27

///

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

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of January 31, 2014, was approximately \$32,827.60 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) caused, permitted, and/or allowed, the possible withdrawal of trust funds from Account #1 by a person who was not licensed by the Bureau and not covered by a fidelity bond in violation of Section 2834 of the Regulations; and,

(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 each account as required by Section 2831.2 of the Regulations.

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:

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

(2) As to Paragraph 11(b), under Section 10177(d) of the Code in conjunction with Section 2834 of the Regulations; and

(3) As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations.

///

///

///

///

1 SECOND CAUSE OF ACTION

2 13.

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

5 14

6 Respondent SCOTT failed to exercise reasonable supervision over the acts of TSI
7 in such a manner as to allow the acts and events described above to occur.

8 15

9 The acts and/or omissions of TSI described in Paragraph 14 constitute failure on
10 the part of SCOTT, as designated broker-officer for TSI, to exercise reasonable supervision and
11 control over the licensed activities of TSI as required by Section 10159.2 of the Code.

12 16

13 The facts described above as to the Second Cause of Action constitute cause for
14 the suspension or revocation of the licenses and license rights of Respondent SCOTT under
15 Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in
16 conjunction with Section 10177(d) of the Code.

17 COST RECOVERY

18 17

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

22 18

23 Section 10106 of the Code provides, in pertinent part, that in any order issued in
24 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the
25 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
26 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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 Respondent under the Code, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.



TRICIA PARKHURST
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 24th day of April, 2014

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, 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.