

FILED

JAN 16 2015

BUREAU OF REAL ESTATE

By S. Black

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

Telephone: (916) 263-8672

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

TOGNOLI & SCOTT INC., and DANIEL
ARTHUR SCOTT,

Respondents.

No. H-6126 SAC

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between TOGNOLI & SCOTT INC., and DANIEL ARTHUR SCOTT (Respondents), and the Complainant, acting by and through Truly Sughrue, Counsel for the Bureau of Real Estate (Bureau), as follows for the purpose of settling and disposing the Accusation filed on May 8, 2014 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 this Stipulation and Agreement.

2. Respondents have received, read, and understand the Statement to Respondent, and the Discovery Provisions of the APA filed by the Bureau in this 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 they understand that by withdrawing said Notice of Defense they will thereby
5 waive their rights to require the Real Estate Commissioner (Commissioner) to prove the
6 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
7 APA, and that they will waive other rights afforded to them in connection with the hearing such
8 as the right to present evidence in defense of the allegations in the Accusation and the right to
9 cross-examine witnesses.

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

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

19 6. Respondents understand that by agreeing to this Stipulation and
20 Agreement, Respondents agrees to pay, pursuant to Section 10148 of the California Business
21 and Professions Code (Code), the cost of the audit, which resulted in the determination that
22 Respondents committed the trust fund violation(s) found in Paragraph I of the Determination of
23 Issues. The amount of said costs is \$2,906.25.

24 7. Respondents further understand that by agreeing to this Stipulation and
25 Agreement, the findings set forth below in the Determination of Issues become final, and that
26 the Commissioner may charge said Respondent for the costs of any audit conducted pursuant to
27 Section 10148 of the Code to determine if the violations have been corrected. The maximum

1 costs of said audit shall not exceed \$2,906.25.

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

9 9. The Order or any subsequent Order of the Commissioner made pursuant to
10 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
11 administrative or civil proceedings by the Bureau of Real Estate with respect to any matters
12 which were not specifically alleged in Accusation H-6126 SAC.

13 * * *

14 DETERMINATION OF ISSUES

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

18 I

19 The acts and omissions of TOGNOLI & SCOTT INC. (TSI) as described in the
20 First Cause of Action of the Accusation are grounds for the suspension or revocation of TSI's
21 licenses and license rights under the following sections of the Code and Title 10 of the
22 California Code of Regulations (Regulations):

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

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

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

3 II

4 The acts and/or omissions of DANIEL ARTHUR SCOTT (SCOTT) as described
5 in the Second Cause of Action of the Accusation is cause for the suspension or revocation of
6 Scott's license and/or license rights under Section 10177(h) of the Code.

7 * * *

8 ORDER

9 I

10 All licenses and licensing rights of Respondent TSI under the Real Estate Law are
11 suspended for a period of forty-five (45) days from the effective date of this Order; provided,
12 however, that:

13 1) Fifteen (15) days of said suspension shall be stayed, upon the condition that TSI petition
14 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
15 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty
16 of \$1,500.

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

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

22 c) If TSI fails to pay the monetary penalty as provided above prior to the effective date of
23 this Order, the stay of the suspension shall be vacated as to that Respondent and the order
24 of suspension shall be immediately executed, under this Order, in which event the said
25 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for
26 the money paid to the Bureau under the terms of this Order.

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

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

8 a) TSI shall obey all laws, rules and regulations governing the rights, duties and
9 responsibilities of a real estate licensee in the State of California; and,

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

15 II

16 All licenses and licensing rights of Respondent SCOTT under the Real Estate Law
17 are suspended for a period of forty-five (45) days from the effective date of this Order; provided,
18 however, that:

19 1) Fifteen (15) days of said suspension shall be stayed, upon the condition that SCOTT petition
20 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section
21 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary penalty
22 of \$1,500.

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

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

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c) If SCOTT fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated as to that Respondent and the order of suspension shall be immediately executed, under this Order, in which event the said Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Bureau under the terms of this Order.

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

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

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

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

3) All licenses and licensing rights of SCOTT are indefinitely suspended unless or until Respondent 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 Respondent has successfully completed the trust fund account and handling continuing education courses, no earlier than 120 days prior to the effective date of the Order in this matter. Proof of completion of the trust fund accounting and handling course must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,

1 Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Order

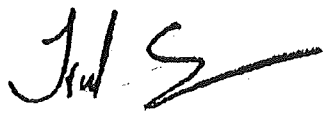
2 III

3 1) Pursuant to Section 10148 of the Code, Respondents shall pay the sum of \$2,906.25 for the
4 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay
5 such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
6 Payment of audit costs should not be made until Respondents receives the invoice. If
7 Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents'
8 real estate licenses shall automatically be suspended until payment is made in full, or until a
9 decision providing otherwise is adopted following a hearing held pursuant to this condition.

10 2) Pursuant to Section 10148 of the Code, Respondents shall pay the Commissioner's reasonable
11 cost, not to exceed \$2,906.25, for an audit to determine if Respondents have corrected the
12 violation(s) found in the Determination of Issues. In calculating the amount of the
13 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
14 for all persons performing audits of real estate brokers, and shall include an allocation for travel
15 time to and from the auditor's place of work. Respondents shall pay such cost within sixty (60)
16 days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should
17 not be made until Respondents receive the invoice. If Respondent fails to satisfy this condition
18 in a timely manner as provided for herein, Respondent real estate license shall automatically be
19 suspended until payment is made in full, or until a decision providing otherwise is adopted

20
21
22 DATED

10-Dec-14


TRULY SUGHRUE
Counsel for Complainant

24 I have read the Stipulation and Agreement, and its terms are understood by me
25 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the
26 California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive
27 those rights, including the right of requiring the Commissioner to prove the allegations in the

1 Accusations at a hearing at which I would have the right to cross-examine witnesses against me
2 and to present evidence in defense and mitigation of the charges.

3 12/8/14
4 DATED

Daniel A. Scott
Daniel Arthur Scott, on behalf of
TOGNOLI & SCOTT INC.
Respondent

7 12/8/14
8 DATED

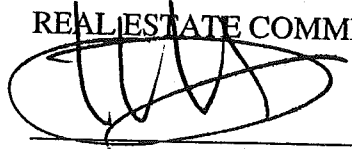
Daniel A. Scott
DANIEL ARTHUR SCOTT
Respondent

11 * * *

12 The foregoing Stipulation and Agreement is hereby adopted as my Decision and
13 shall become effective at 12 o'clock noon on FEB 06 2015

14 IT IS SO ORDERED DEC 22 2014

16 REAL ESTATE COMMISSIONER

17 

18 By: JEFFREY MASON
19 Chief Deputy Commissioner