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FILED

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BUREAU OF REAL ESTATE
By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of }
12 TOGNOLI & SCOTT, INC. } No. H-6564 SAC
13 and DANIEL ARTHUR SCOTT, } ACCUSATION
14 Respondents. }

15 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
16 of the State of California, for Accusation against Respondents TOGNOLI & SCOTT, INC. (T &
17 S) and DANIEL ARTHUR SCOTT (SCOTT), sometimes collectively referred to as
18 Respondents, is informed and alleges as follows:

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20 The Complainant makes this Accusation against Respondents in her official
21 capacity.

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23 T & S is presently licensed and/or has license rights under the Real Estate Law,
24 Part 1 of Division 4 of the California Business and Professions Code (Code), by the Bureau of
25 Real Estate (Bureau) as a corporate real estate broker doing business as Elite Property
26 Management, Elite Realty Advisors and Exit Realty Elite.

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SCOTT is presently licensed and/or has license rights under the Code as a real estate broker.

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At all times mentioned herein, SCOTT was the designated broker-officer of T & S. As the designated broker-officer, SCOTT was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of T & S for which a real estate license is required to ensure the compliance of the corporation with the Real Estate law and the Regulations.

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At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including 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 or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rents from real property, or improvements thereon, or from business opportunities.

FIRST CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 5, above, and incorporates the same, herein.

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Beginning on February 26, 2016, and continuing intermittently through April 8, 2016, an audit was conducted at T & S's branch office located at 400 Santa Clara Street, Suite #110, Vallejo, California, and at the Bureau's district office located at 1651 Expositions Blvd.,

1 Sacramento, California, where the auditor examined records for the period of January 1, 2015,
2 through December 31, 2015 (the audit period).

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4 While acting as a real estate broker as described in Paragraph 5, above, and
5 within the audit period, Respondents accepted or received funds in trust (trust funds) from or on
6 behalf of property owners, lessees and others in connection with property management
7 activities, and deposited or caused to be deposited those funds into bank accounts maintained by
8 Respondents at Bank of the West, 4300 Sonoma Blvd., Vallejo, California, as described below:

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TRUST ACCOUNT #1	
10 Account No.:	XXXXXX0520
11 Entitled:	Elite Property Management Trust Funds

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TRUST ACCOUNT #2	
13 Account No.:	XXXX7156
14 Entitled:	Elite Property Deposit Trust funds

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16 and thereafter from time-to-time made disbursement of said trust funds.

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18 In the course of the activities described in Paragraph 5, in connection with the
19 collection and disbursement of trust funds, it was determined that:
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- 21
- 22 (a) An accountability was performed on Trust Account #1, and as of
23 December 31, 2015, a shortage of \$30,160.33 was revealed in violation of
24 10145 of the Code;
 - 25 (b) An accountability was performed on Trust Account #2, and as of
26 December 31, 2015, a shortage of \$32,905.87 was revealed in violation of
27 Section 10145 of the Code;

- 1 (c) Respondents failed to obtain written permission from owners of trust
2 funds in Trust Account #1 and Trust Account #2, to allow the balances to
3 drop below accountability, in violation of Section 2832.1 of the
4 Regulations;
- 5 (d) Respondents failed to maintain accurate records of all funds received and
6 disbursed (control records) for Trust Account #1, as required by Section
7 2831 of the Regulations; and
- 8 (e) Respondents failed to perform monthly reconciliations of the separate
9 beneficiary records and control records for Trust Account #1, as required
10 by Section 2831.2 of the Regulations.

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12 The acts and/or omissions described above constitute violations of Sections 2831
13 (control records), 2831.2 (monthly reconciliations) and 2832.1 (written permission balance
14 below accountability) of the Regulations and of Section 10145 (trust fund handling) of the
15 Code, and are grounds for discipline under Sections 10177(d) (willful disregard of real estate
16 laws) and 10177(g) (negligence/incompetence licensee) of the Code.

17 SECOND CAUSE OF ACTION

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19 Complainant refers to Paragraphs 1 through 10, above, and incorporates the
20 same, herein.

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22 At all times herein above mentioned, SCOTT was responsible, as the supervising
23 designated broker/officer for T & S, for the supervision and control of the activities conducted
24 on behalf of T & S's business by its employees to ensure its compliance with the Real Estate
25 Law and Regulations. SCOTT failed to exercise reasonable supervision and control over the
26 property management activities of T & S. In particular, SCOTT permitted, ratified and/or
27 caused the conduct described above to occur, and failed to take reasonable steps, including but

1 not limited to, the handling of trust funds, supervision of employees, and the implementation of
2 policies, rules, and systems to ensure the compliance of the business with the Real Estate Law
3 and the Regulations.

4 13

5 Or about February of 2014, Respondents hired Sharon Dailey (Dailey) to handle
6 trust funds and the accounting thereof. Dailey continued to handle trust funds for Respondents
7 until on or about March 2016.

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9 During the audit referred to in Paragraphs 7 and 8, above, it was revealed that
10 Dailey embezzled trust funds by writing checks to herself, or to Lester Nickelson (Nickelson),
11 Dailey's half-brother.

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13 After the audit began, Respondents discovered that Dailey wrote eight checks to
14 herself or Nickelson, totaling \$16,050.00, beginning on December 16, 2015, through February
15 16, 2016.

16 16

17 The auditor discovered two additional checks that Dailey had written to herself,
18 including one written on December 8, 2015, in the amount of \$3,000.00 and another dated
19 December 12, 2015, in the amount of \$6,000.00.

20 17

21 Subsequent to discovering that Dailey had embezzled trust funds, Respondents
22 did a background check on Dailey and learned that Dailey was convicted and sentenced to
23 prison for fraud arising out of payments pursuant to the Hurricane Katrina relief program. After
24 the embezzlement of trust funds, Respondents further learned that Dailey had been sued several
25 times in Solano County Superior Court.

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The above acts and/or omissions of SCOTT violate Section 2725(broker supervision) of the Regulations and Section 10159.2 (responsibility/designated officer) of the Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d), 10177(g) and 10177(h) (broker supervision) of the Code.

Prior Discipline

Effective February 6, 2015, in Case No. H-6126 SAC, the Real Estate Commissioner suspended Respondents' real estate licenses, with the right to buy down the suspensions and ordered Respondents to pay for the cost of the audit and follow up audit. The grounds for said discipline were violations of Sections 2832.1, 2831.2 and 2834 of the Regulations and Sections 10145 and 10177(d) of the Code. Further grounds for discipline of SCOTT were failure to supervise, under Section 10177(h) of the Code.

Audit Costs

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

Costs of Investigation and Enforcement

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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.

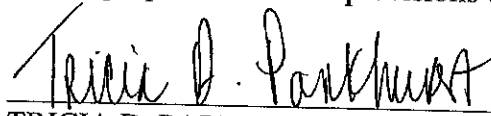
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law, and for such other and further relief as may be proper under other provisions of law.



TRICIA D. PARKHURST
Supervising Special Investigator

Dated at Sacramento, California,
this 7th day of July, 2017