

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

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FILED

AUG 12 2019

DEPARTMENT OF REAL ESTATE
By K. Kruep

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of) BRE No. H-6564 SAC
13)
14 TOGNOLI & SCOTT, INC. and,)
15 DANIEL ARTHUR SCOTT) STIPULATION AND AGREEMENT
Respondents.) IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between TOGNOLI & SCOTT, INC. (T & S), and
17 DANIEL ARTHUR SCOTT (SCOTT), collectively Respondents, their counsel Jeffrey Kravitz,
18 and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of
19 Real Estate (Department); as follows for the purpose of settling and disposing of the First
20 Amended Accusation filed on July 12, 2017, in this matter:

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

26 2. Respondents have received, read, and understand the Statement to
27 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of

1 Real Estate in this proceeding.

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

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

17 5. It is understood by the parties that the Commissioner may adopt the
18 Stipulation as his Decision and Order in this matter, thereby imposing the penalty and sanctions
19 on Respondents' real estate licenses and license rights as set forth in the below "Order". In the
20 event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and
21 of no effect, and Respondents shall retain the rights to a hearing and proceeding on the First
22 Amended Accusation under all the provisions of the APA and shall not be bound by any
23 admission or waiver made herein.

24 6. The Order or any subsequent Order of the Commissioner made pursuant to
25 this Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or
26 civil proceedings by the Department with respect to any matters which were not specifically
27 alleged to be causes for accusation in this proceeding.

1 7. Respondents understand that by agreeing to this Stipulation, Respondents
2 agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
3 violation(s) found in the Determination of Issues. The amount of such costs is \$6,463.60.

4 8. In lieu of proceeding in this matter in accordance with the provisions of
5 the APA, T & S wishes to voluntarily surrender its corporate real estate broker license issued by
6 the Department, pursuant to Section 10100.2 of the Code.

7 9. T & S understands that by so voluntarily surrendering its license, it may
8 be re-licensed as a broker only by petitioning for reinstatement pursuant to Section 11522 of the
9 Government Code. T & S also understands that by so voluntarily surrendering it's license, it
10 agrees to the following:

11 A. The filing of this Stipulation and Agreement shall be deemed as T& S's
12 declaration and petition for voluntary surrender.

13 10. T & S further agrees that upon acceptance by the Commissioner, as
14 evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the
15 Department in this matter prior to the Commissioner's acceptance, and all allegations contained
16 in the Accusation filed in the Department Case No. H-6564 SAC, may be considered by the
17 Department to be true and correct for the purpose of deciding whether to grant re-licensure or
18 reinstatement pursuant to Government Code Section 11522.

19 11. T & S freely and voluntarily surrenders all its licenses and license rights
20 under the Real Estate Law.

21 12. Respondents understand that by agreeing to this Stipulation, Respondents
22 agree to pay, pursuant to Section 10148 of the Code, the cost of the audit which resulted in the
23 violation(s) found in the Determination of Issues. The amount of such costs is \$6,463.60.

24 13. Respondents further understand that by agreeing to this Stipulation, the
25 findings set forth below in the "Determination of Issues" become final, and that the
26 Commissioner may charge said Respondents for the costs of any audit conducted pursuant to
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1 Section 10148 of the Code to determine if the violations have been corrected. The maximum
2 cost of said audit shall not exceed \$8,079.50.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and waivers, and solely for
5 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
6 that the acts and/or omissions of Respondents, as described in the First Amended Accusation,
7 constitute grounds for the suspension or revocation of the licenses and license rights of
8 Respondents under the provisions of Sections 10177(d) of the Code.

9 ORDER

10 TOGNOLI & SCOTT, INC.

11 1. T & S's petition for voluntary surrender of its corporate real estate broker
12 license is accepted as of the effective date of this Order as set forth below, based upon
13 the understanding and agreement expressed in T & S's Declaration incorporated herein as part of
14 this Stipulation and Agreement. T & S's license certificates, pocket cards and any branch office
15 license certificates shall be sent to the below listed address so that they reach the Department on
16 or before the effective date of this Order:

17 DEPARTMENT OF REAL ESTATE
18 Attn: Licensing Flag Section
19 P. O. Box 137000
20 Sacramento, CA 95813-7000

21 DANIEL ARTHUR SCOTT

22 All licenses and licensing rights of SCOTT, under the Real Estate Law are
23 revoked; provided, however, a restricted real estate salesperson license shall be issued to
24 SCOTT, pursuant to Section 10156.5 of the Code, if SCOTT makes application therefore and
25 pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days
26 from the effective date of this Stipulation. The restricted license issued to SCOTT shall be
27 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 the Code:

1 having taken and successfully completed the continuing education requirements. Proof of
2 completion of the continuing education courses must be delivered to the Department of Real
3 Estate, Flag Section, at P.O. Box 137013, Sacramento, CA 95813-7013.

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

14 TOGNOLI & SCOTT, INC. and DANIEL ARTHUR SCOTT

15 1. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
16 severally, pay the sum of \$6,463.60 for the Commissioner's cost of the audit which led to this
17 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
18 invoice therefore from the Commissioner. Payment of audit costs should not be paid until
19 Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely manner
20 as provided for herein, Respondents' real estate licenses shall automatically be suspended until
21 payment is paid in full, or until a decision providing otherwise is adopted following a hearing
22 held pursuant to this condition.

23 2. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
24 severally, pay the Commissioner's reasonable cost, not to exceed \$8,079.50, for an audit to
25 determine if Respondents have corrected the violation(s) found in the "Determination of Issues".
26 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
27 estimated average hourly salary for all persons performing audits of real estate brokers, and shall

1 include an allocation for travel time to and from the auditor's place of work. Respondents shall
2 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
3 Payment of the audit costs should not be paid until Respondents receive the invoice. If
4 Respondents fails to satisfy this condition in a timely manner as provided for herein,
5 Respondents' real estate licenses shall automatically be suspended until payment is paid in full,
6 or until a decision providing otherwise is adopted following a hearing held pursuant to this
7 condition.

8 3. All licenses and licensing rights of Respondents are indefinitely
9 suspended unless or until Respondent provides proof satisfactory to the Commissioner, that
10 Respondent has cured the shortage found in the audit. Proof of curing the shortage must be
11 delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, California
12 95813, prior to the effective date this Decision and Order.

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14 7/17/09

15 DATED

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15 RICHARD K. UNO, Counsel III
16 DEPARTMENT OF REAL ESTATE

17 * * *

18 I have read the Stipulation and Agreement in Settlement and Order and its terms
19 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
20 rights given to me by the California Administrative Procedure Act (including but not limited
21 to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
22 intelligently, and voluntarily waive those rights, including the right of requiring the
23 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
24 right to cross-examine witnesses against me and to present evidence in defense and mitigation
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5/9/19

DATED

Daniel A. Scott.

TOGNOLI & SCOTT, INC.
BY: DANIEL ARTHUR SCOTT

5/9/19

DATED

Daniel A. Scott.

DANIEL ARTHUR SCOTT

I have reviewed this Stipulation and Agreement as to form and content and have advised my clients accordingly.

5-19-19

DATED

Jeffrey Kravitz
JEFFREY KRAVITZ
Attorney for Respondents

The foregoing Stipulation and Agreement In Settlement and Order is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on SEP 03 2019.

IT IS SO ORDERED August 5, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri