

FILED

SEP 20 2011

DEPARTMENT OF REAL ESTATE

By P. Jones

DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
DAVID EDWARD SPOTT,)
and)
DOUGLAS CAMPBELL FOXWORTHY)
Respondents.)

NO. H- 10964 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

It is hereby stipulated by and between Respondent DAVID EDWARD SPOTT (hereafter "Respondent"), acting by and through Mary L. Melton, Counsel for Respondent, and the Complainant, acting by and through Kenneth C. Espell, Counsel for the Department of Real Estate, (hereinafter "the Department") as follows for the purpose of settling and disposing of the Accusation filed on July 19, 2010, in this matter:¹

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

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real

¹ The second respondent, DOUGLAS CAMPBELL FOXWORTHY died during the pendency of this action and thus was dismissed upon receipt of a Certified Death Certificate on November 16, 2010.

1 Estate in this proceeding.

2 3. On July 26, 2010, Respondent filed a Notice of Defense pursuant to Section
3 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the
4 Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
5 Respondent acknowledges that Respondent understands that by withdrawing said Notice of
6 Defense, Respondent will thereby waive Respondent's right to require the Commissioner to
7 prove the allegations in the Accusation at a contested hearing held in accordance with the
8 provisions of the APA and that Respondent will waive other rights afforded to Respondent in
9 connection with the hearing such as the right to present evidence in defense of the allegations
10 in the Accusation and the right to cross-examine witnesses.

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

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

24 6. This Stipulation and Agreement shall not constitute an estoppel, merger or bar
25 to any further administrative or civil proceedings by the Department of Real Estate with respect
26 to any matters which were not specifically alleged to be causes for accusation in this
27 proceeding.

7. Respondent understands that by agreeing to this Stipulation and Agreement, Respondent agrees to pay pursuant to Section 10148 of the California Business and Professions Code (herein "Code"), the cost of the audit which resulted in the determination that Respondent committed the trust fund violation(s) found in the Determination of Issues below. The amount of the cost of the audit is \$4,164.85.

8. Respondent further understands that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the Determination of Issues become final and the Commissioner may charge Respondent for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the trust fund violation(s) found in Paragraph 1 of the Determination of Issues, below, have been corrected. The maximum costs of said audit shall not exceed \$4,164.85.

DETERMINATION OF ISSUES

1

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the acts and omissions of Respondent described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of Title 10 of the California Code of Regulations (hereinafter the "Commissioner's Regulations):

- (a) As to Paragraph 10(a) Section 10130 of the Code;
- (b) As to Paragraph 10(b) Section 2831.2 of the Commissioner's Regulations;
- (c) As to Paragraph 10(c) Section 10145 of the Code and Section 2832 of the Commissioner's Regulations;
- (d) As to Paragraph 10(d) Section 2834 of the Commissioner's Regulations;
- (e) As to Paragraph 10(e) Section 2731 of Commissioner's Regulations;
- (f) As to Paragraph 10(f) of Section 10163 of the Code;
- (g) As to Paragraph 10(g) Section 2726 of the Commissioner's Regulations;
- (h) As to Paragraph 10(h) Section 10148 of the Code;

- 1 (i) As to Paragraph 10(i) Section 2725 of the Commissioner's Regulations;;
2 (j) As to Paragraph 13 Section 10177(g) of the Code; and,
3 (k) As to Paragraph 17 Section 10177(g) of the Code and Section 2725 of the
4 Commissioner's Regulations.

5 ORDER

6 All licenses and licensing rights of Respondent under the Real Estate Law are
7 suspended for a period of ninety (90) days from the effective date of this order, provided
8 however, that:

9 1. Forty-five (45) days of said ninety (90) day suspension shall be stayed for two
10 (2) years upon the following terms and conditions:

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

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

18 2. The remaining forty-five (45) days of said ninety (90) day suspension shall be
19 stayed upon the condition that Respondent petition pursuant to Section 10175.2 of the Code and
20 pay a monetary penalty at a rate of \$100.00 for each day of the suspension for a total monetary
21 penalty of \$4,500.00:

22 a. Said payment shall be in the form of a cashier's check or certified check
23 made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to
24 the Department prior to the effective date of the Decision in this matter.

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

27 and,

1 c. If Respondent fails to pay the monetary penalty as provided above prior to
2 the effective date of this Order, the stay shall be vacated as to Respondent and the order of
3 suspension shall be immediately executed under this Paragraph 1 of this Order, in which event
4 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the
5 money paid to the Department under the terms of this Order.

6 3. Respondent understands that by agreeing to this Stipulation and Agreement and
7 Order, Respondent agrees to pay pursuant to Section 10148 of the Code the cost of the audit
8 which resulted in the determination that Respondent committed the trust fund violation(s) found
9 in Paragraph 1 of the Determination of Issues, above. The amount of the cost of the audit is
10 \$4,164.85. If Respondent fails to pay such cost within the sixty (60) days, the Commissioner
11 may in his discretion indefinitely suspend all license and licensing rights of Respondent under
12 the Real Estate Law until payment is made in full or until Respondent enters into an agreement
13 satisfactory to the Commissioner to provide for payment. Upon payment in full, the indefinite
14 suspension provided in this paragraph shall be stayed.

15 4. Respondents understand that by agreeing to this Stipulation and Agreement in
16 Settlement and Order, the findings set forth in the DETERMINATION OF ISSUES become
17 final and the Commissioner may charge Respondents for the cost of any follow-up audit
18 conducted pursuant to Section 10148 of the Business and Professions Code to determine if the
19 same violations and/or new violations of real estate law have occurred. The maximum costs of
20 said audit will not exceed \$4,164.85 of any audit conducted pursuant to Section 10148 of the
21 Code to determine if Respondent has corrected the violations described in Paragraph 1 of the
22 Determination of Issues, above. In calculating the amount of the Commissioner's reasonable
23 cost, the Commissioner may use the estimated average hourly salary for all persons performing
24 audits of real estate brokers, and shall include an allocation for travel time to and from the
25 auditor's place of work. Respondent shall pay such cost within sixty (60) days of receiving an
26 invoice therefore from the Commissioner detailing the activities performed during the audit and
27 the amount of time spent performing those activities. If Respondent fails to pay such cost

1 within the sixty (60) days, the Commissioner may in his discretion indefinitely suspend all
2 license and licensing rights of Respondent under the Real Estate Law until payment is made in
3 full or until Respondent enters into an agreement satisfactory to the Commissioner to provide
4 for payment. Upon payment in full, the indefinite suspension provided in this paragraph shall
5 be stayed.

6 5. Respondent shall, within six (6) months from the effective date of this Order,
7 take and pass the Professional Responsibility Examination administered by the Department,
8 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
9 condition, the Commissioner may order the suspension of all licenses and licensing rights until
10 Respondent passes the examination.

11 6. All licenses and licensing rights of Respondent are indefinitely suspended
12 unless or until Respondent provides proof satisfactory to the Commissioner of having taken and
13 successfully completed the continuing education course on trust fund accounting and handling
14 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
15 Code. Proof of satisfaction of this requirement includes evidence that Respondent has
16 successfully completed the trust fund account and handling continuing education course within
17 120 days prior to the effective date of the Decision in this matter.

18
19 8/30/11

20 DATED

21
22 

23 KENNETH C. ESPELL, Counsel
24 Department of Real Estate

25 * * *

26 I have read the Stipulation and Agreement and its terms are understood by me
27 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
the California Administrative Procedure Act (including but not limited to Sections 11506,
11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
voluntarily waive those rights, including the right of requiring the Commissioner to prove the

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

4/26/11

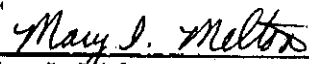
DATED


DAVID EDWARD SPOTT
Respondent

7
8 *I have reviewed this Stipulation and Agreement and Order as to form and*
9 *content and have advised my client accordingly.*

5/2/11

DATED

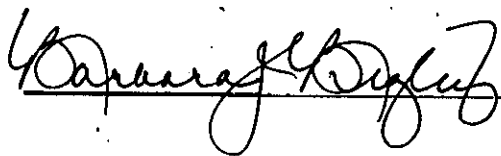

Mary L. Melton
Attorney for Respondent

13
14 The foregoing Stipulation and Agreement is hereby adopted by me as my
15 Decision in this matter as to Respondent DAVID EDWARD SPOTT and shall become effective
16 at 12 o'clock noon on OCT 10 2011

IT IS SO ORDERED

9/12/11

18 BARBARA J. BIGBY
19 Acting Real Estate Commissioner



FILED

NOV 17 2010

DEPARTMENT OF REAL ESTATE

By L. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

No. H-10964 SF

DAVID EDWARD SPOTT and
DOUGLAS CAMPBELL FOXWORTHY,

Respondents.

DISMISSAL DUE TO DEATH OF RESPONDENT.

The Accusation filed in this action on July 19, 2010, is DISMISSED as to
Respondent DOUGLAS CAMPBELL FOXWORTHY ONLY and shall go forward against the
remaining Respondent, DAVID EDWARD SPOTT.

IT IS SO ORDERED this 16 day of November, 2010.

JEFF DAVIS
Real Estate Commissioner

[Signature]

KENNETH C. ESPELL, Counsel (SBN 178757)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0868 (Direct)

FILED

JUL 19 2010

DEPARTMENT OF REAL ESTATE

By R. Honey

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	
DAVID EDWARD SPOTT, and	)	NO. H-10964 SF
DOUGLAS CAMPBELL FOXWORTHY,	)	
	)	<u>ACCUSATION</u>
	)	
Respondents.	)	
	)	

The Complainant, E. J. HABERER II, in his official capacity as Deputy Real Estate Commissioner of the State of California, for cause of Accusation against DAVID EDWARD SPOTT (herein "SPOTT") and DOUGLAS CAMPBELL FOXWORTHY (herein "FOXWORTHY"), is informed and alleges as follows:

THE RESPONDENTS

1

At all times herein mentioned, Respondents SPOTT was and now is licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code") as a real estate broker; was the employer of FOXWORTHY; and was responsible for the supervision of the real estate related activities of FOXWORTHY.

On or about February 15, 2009, SPOTT's real estate broker license expired, but was renewed on or about September 21, 2009. For the aforementioned period, SPOTT was unlicensed and could not conduct real estate related activities for which a valid California real estate license is required, including supervising FOXWORTHY.

At all times herein mentioned, Respondent FOXWORTHY was and now is licensed and/or has license rights under the Code as a real estate salesperson.

On or about February 7, 2009, FOXWORTHY's real estate salesperson license expired. On or about September 29, 2009, FOXWORTHY renewed his real estate salesperson license.

At all times herein mentioned, Respondents, and each of them, were and are engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate broker within the State of California within the meaning of Sections 10131(d) and 10131(e) of the Code, including the operation and conduct of a real estate property management business on behalf of others for compensation or in expectation of compensation.

2009 AUDIT

Beginning November 23, 2009 and continuing until December 22, 2009, an audit was conducted at the home office of Douglas C. Foxworthy, located at 18786 Lamson Road, Castro Valley, California and at the Oakland District Office of the California Department of Real Estate located at 1515 Clay Street, Suite 702, Oakland, California, wherein the auditor examined records for the period January 1, 2008 through November 30, 2009 (the audit period).

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1 (b) Failed to perform and/or maintain records of the required monthly
2 reconciliation that compares the total balance of the beneficiary records with the control record
3 for the period January 1, 2008 to October 31, 2009, in violation of Section 2831.2 of the
4 Regulations;

5 (c) Failed to designate "Bank #1" as a trust account in the name of the broker
6 or his licensed fictitious business name, in violation of Section 10145 of the Code and Section
7 2832 of the Regulations;

8 (d) Failed: (1) to provide evidence of fidelity bond coverage for Sherry
9 FOXWORTHY, an unlicensed individual, who had signatory authority on Bank #1; (2) for bond
10 coverage of FOXWORTHY when, for the February 7, 2009 through September 29, 2009,
11 FOXWORTHY's license had expired; and, (3) failed to include SPOTT as a signatory of the
12 account; all in violation of Section 2834 of the Regulations;

13 (e) Failed to register the fictitious business name, Campbell Properties with
14 the Department of Real Estate in violation of Section 2731 of the Regulations;

15 (f) Failed to register 484 Lakepark Avenue, #233, Oakland, California, as a
16 branch office, in violation of Section 10163 of the Code;

17 (g) Failed to have a broker-salesperson agreement with FOXWORTHY
18 which covered the material aspects of the relationship between the parties with respect to
19 supervision of licensed activities, in violation of Section 2726 of the Regulations;

20 (h) Failed to retain full sized copies, front and back, of all cancelled checks
21 for Bank #1 in violation of Section 10148 of the Code;

22 (i) Failed to have formal written policies, rules, procedures, and systems to
23 review, oversee, inspect and manage transactions, in violation of Section 2725 of the
24 Regulations.

26 The acts and/or omissions of SPOTT as alleged above violated Sections 2725,
27 2726, 2731, 2832, 2831.2, and 2834 of the Regulations and Sections 10130, 10145, 10148, and

1 10163 of the Code, and are grounds for discipline under Sections 10176 and 10177(d) of the
2 Code.

3 SECOND CAUSE OF ACTION
4 Negligence and/or Incompetence

5 12

6 Each and every allegation in Paragraphs 1 through 11, inclusive, above, are
7 incorporated by this reference as if fully set forth herein.

8 13

9 The acts and omissions of SPOTT and FOXWORTHY as described in
10 paragraphs 8 through 11, above, jointly and severally, constitute negligence or incompetence in
11 performing acts requiring a real estate license, and are cause under Section 10177(g) of the Code
12 for suspension or revocation of all licenses and license rights of SPOTT and/or FOXWORTHY.

13 THIRD CAUSE OF ACTION
14 Unlicensed Activities of Foxworthy

15 14

16 Each and every allegation in Paragraphs 1 through 13, inclusive, above are
17 incorporated by this reference as if fully set forth herein.

18 15

19 On or about February 7, 2009, FOXWORTHY's real estate salesperson license
20 expired. On or about September 29, 2009, within the two-year grace period, FOXWORTHY
21 renewed his real estate salesperson license. During the period February 7, 2009 and to
22 September 29, 2009, FOXWORTHY's real estate license was expired and FOXWORTHY could
23 not conduct real estate related activities for which a valid California real estate license was
24 required. However, during the period February 7, 2009 to September 29, 2009, FOXWORTHY
25 continued to conduct property management activities in violation of Section 10130 of the Code
26 which is cause for suspension or revocation of all licenses and license rights of FOXWORTHY
27 under Section 10177(d) of the Code.

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FOURTH CAUSE OF ACTION

Failure to Supervise

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Each and every allegation in Paragraphs 1 through 15, inclusive, above, is incorporated by this reference as if fully set forth herein.

17

Respondent SPOTT, as the supervising broker of FOXWORTHY, was required to exercise reasonable supervision and control over the activities of FOXWORTHY. Respondent SPOTT failed to exercise reasonable supervision over the acts of FOXWORTHY in such a manner as to allow the acts and omissions on the part of FOXWORTHY as described above, to occur, all in violation of Section 10177(g) of the Code and Section 2725 of the Regulations which constitute cause for suspension or revocation of all licenses and license rights of Respondents SPOTT under Section 10177(d) of the Code.

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 (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.


E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California

this 14th day of July, 2010.