

FILED
MAY - 9. 2002
DEPARTMENT OF REAL ESTATE

By



DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-29060 LA
	)	
STEPHEN FRANCIS BIAFORA,	)	L-2001050600
individually and doing business as)	)	
J & S Props & Mgmt; and JOSEPH R.	)	STIPULATION AND
BIAFORA, JR., individually and	)	AGREEMENT
doing business as J & S Props &	)	
Mgmt,	)	
	)	
Respondents.	)	

It is hereby stipulated by and between JOSEPH R. BIAFORA, JR. (referred to as Respondent herein), acting by and through his Counsel, Gary D. Lampert, Esq., of Biafora, Weiner & Lampert, and the Complainant, acting by and through Sean Crahan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on May 17, 2001, in this matter:

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

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation And Agreement (hereafter Stipulation).

5 2. Respondent has received, read and understands the
6 Statement to Respondent, the Discovery Provisions of the APA and
7 the Accusation, filed by the Department of Real Estate in this
8 proceeding.

9 3. On June 4, 2001, Respondent filed a Notice of
10 Defense pursuant to Section 11506 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondent hereby freely and voluntarily withdraws
13 said Notice of Defense. Respondent acknowledges that he
14 understands that by withdrawing said Notice of Defense, he will
15 thereby waive his right to require the Commissioner to prove the
16 allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that he will waive
18 other rights afforded to him in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

21 4. This Stipulation and Agreement relates to the
22 factual allegations contained in paragraphs one (1) through
23 eleven (11) in the Accusation filed in this proceeding.
24 Respondent chooses not to contest these factual allegations and
25 to remain silent and understands that, as a result thereof, these
26 factual allegations, without being admitted or denied, will serve
27

1 as a basis for the discipline stipulated to herein. This
2 Stipulation and Agreement and the findings based on Respondent's
3 decision not to contest the Accusation is hereby expressly
4 limited to this proceeding and made for the sole purpose of
5 reaching an agreed disposition of this proceeding, only.
6 Respondent's decision not to contest the factual allegations is
7 made solely for the purpose of effectuating this Stipulation and
8 is intended by Complainant and Respondent to be non-binding upon
9 him in any actions against Respondent by third parties and shall
10 not be deemed, used, or accepted as an acknowledgement or
11 admission. The Real Estate Commissioner shall not be required to
12 provide further evidence to prove such allegations.

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

23 6. The Order or any subsequent Order of the Real
24 Estate Commissioner made pursuant to this Stipulation And
25 Agreement shall not constitute an estoppel, merger or bar to any
26 further administrative or civil proceedings by the Department of
27

1 Real Estate with respect to any matters which were not
2 specifically alleged to be causes for accusation in this
3 proceeding.

4 7. The below Determination of Issues contains a
5 determination that Respondent JOSEPH R. BIAFORA, JR. has violated
6 Code Sections 10145, 10159.5 and Regulations 2831 and 2832.
7 Respondent JOSEPH R. BIAFORA, JR., is aware that by agreeing to
8 this Stipulation And Agreement, if the findings set forth below
9 in the Determination of Issues become final, the Commissioner may
10 charge Respondent JOSEPH R. BIAFORA, JR. for the costs of Audit
11 LA 000003 and of any follow-up audit conducted pursuant to
12 Section 10148 of the Code to determine if Respondent JOSEPH R.
13 BIAFORA, JR., is in compliance with the Real Estate Law. The
14 maximum cost of the audit will not exceed \$2,956.80.

15 DETERMINATION OF ISSUES

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

20 The conduct, acts or omissions of Respondent JOSEPH R.
21 BIAFORA, JR. under Part 1 of Division 4 of the Business and
22 Professions Code, as set forth in paragraphs one (1) through
23 eleven (11) in the Accusation, constitute cause to suspend or
24 revoke his real estate broker license and/or license rights under
25 the provisions of Code Sections 10177(d) for violations of Code
26 Sections 10145, 10159.5 and Regulations 2831 and 2832.
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

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

1 until Respondent passes the examination.

2 The remaining sixty (60) days of the ninety (90) day
3 suspension shall be stayed for two (2) years upon the following
4 terms and conditions:

5 (a) Respondent JOSEPH R. BIAFORA, JR., shall obey
6 all laws, rules and regulations governing the rights, duties and
7 responsibilities of a real estate licensee in the State of
8 California.

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

17 (c) Pursuant to Section 10148 of the Business and
18 Professions Code, Respondent shall pay the Commissioner's
19 reasonable cost for: a) the audit which led to this disciplinary
20 action and, b) a subsequent audit to determine if Respondent has
21 corrected the trust fund violations found in the Determination of
22 Issues. In calculating the amount of the Commissioner's
23 reasonable cost, the Commissioner may use the estimated average
24 hourly salary for all persons performing audits of real estate
25 brokers, and shall include an allocation for travel costs,
26 including mileage, time to and from the auditor's place of work
27 and per diem. Respondent shall pay such cost within 45 days of

1 receiving an invoice from the Commissioner detailing the
2 activities performed during the audit and the amount of time
3 spent performing those activities. The Commissioner may, in his
4 discretion, vacate and set aside the stay order, if payment is
5 not timely made as provided for herein, or as provided for in a
6 subsequent agreement between the Respondent and the Commissioner.
7 The vacation and the set aside of the stay shall remain in effect
8 until payment is made in full, or until Respondent enters into an
9 agreement satisfactory to the Commissioner to provide for
10 payment.

11 Should no order vacating the stay be issued, either in
12 accordance with this condition or any of the conditions herein
13 above, the stay hereby granted shall become permanent.

14
15 DATED: April 19, 2001

Sean Crahan
SEAN CRAHAN, Counsel for
Complainant.

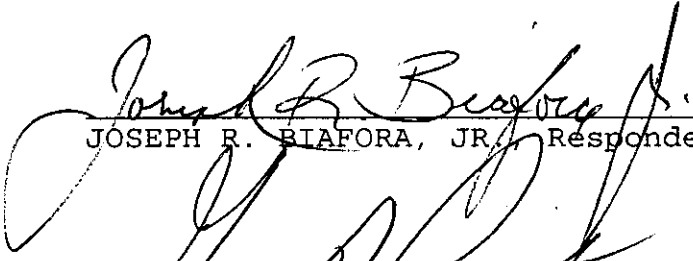
17 I have read the Stipulation And Agreement, and its
18 terms are understood by me and are agreeable and acceptable to
19 me. I understand that I am waiving rights given to me by the
20 California Administrative Procedure Act (including but not
21 limited to Sections 11506, 11508, 11509 and 11513 of the
22 Government Code), and I willingly, intelligently and voluntarily
23 waive those rights, including the right of requiring the
24 Commissioner to prove the allegations in the Accusation at a
25 hearing at which I would have the right to cross-examine
26 witnesses against me and to present evidence in defense and
27

mitigation of the charges.

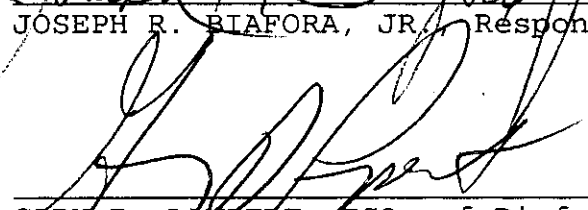
Respondent can signify acceptance and approval of the terms and conditions of this stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondent, to the Department at the following telephone/fax number: (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

Further, Respondent's counsel will, within 24 hours of obtaining Respondent's original signature to the Stipulation and Agreement, deliver the Stipulation and Agreement to the Department.

DATED: 4/5/02


JOSEPH R. BIAFORA, JR., Respondent.

DATED: 4/2/02


GARY D. LAMPERT, ESQ. of Biafora, Weiner & Lampert, Counsel for Respondent Joseph R. Biafora, Jr., approved as to form.

///

///

///

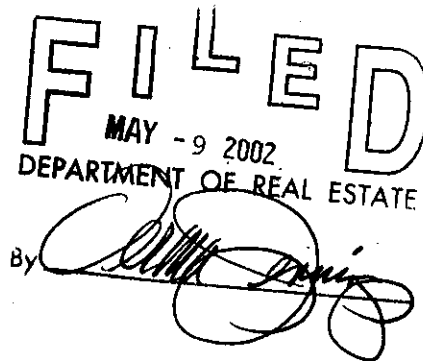
///

- 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

IT IS SO ORDERED

Real Estate Commissioner

Paula Reddish



8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-29060 LA
12)
12 STEPHEN FRANCIS BIAFORA,) L-2001050600
13 individually and doing business as) STIPULATION AND
13 J & S Props & Mgmt; and JOSEPH R.) AGREEMENT
14 BIAFORA, JR., individually and)
14 doing business as J & S Props &)
15 Mgmt,)
15)
16 Respondents.)

17 It is hereby stipulated by and between STEPHEN FRANCIS
18 BIAFORA (referred to as Respondent herein), acting by and through
19 his Counsel, Eric S. Oto, Esq., and the Complainant, acting by
20 and through Sean Crahan, Counsel for the Department of Real
21 Estate, as follows for the purpose of settling and disposing of
22 the Accusation filed on May 17, 2001, in this matter:

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondent
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27

1 Procedure Act (APA), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation And Agreement (hereafter Stipulation).

4 2. Respondent has received, read and understands the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation, filed by the Department of Real Estate in this
7 proceeding.

8 3. On May 22, 2001, Respondent filed a Notice of
9 Defense pursuant to Section 11506 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense, he will
14 thereby waive his right to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that he will waive
17 other rights afforded to him in connection with the hearing such
18 as the right to present evidence in defense of the allegations in
19 the Accusation and the right to cross-examine witnesses.

20 4. This Stipulation and Agreement relates to the
21 factual allegations contained in paragraphs one (1) through
22 eleven (11) in the Accusation filed in this proceeding.
23 Respondent chooses not to contest these factual allegations and
24 to remain silent and understands that, as a result thereof, these
25 factual allegations, without being admitted or denied, will serve
26 as a basis for the discipline stipulated to herein. This
27

1 Stipulation and Agreement and the findings based on Respondent's
2 decision not to contest the Accusation is hereby expressly
3 limited to this proceeding and made for the sole purpose of
4 reaching an agreed disposition of this proceeding, only.
5 Respondent's decision not to contest the factual allegations is
6 made solely for the purpose of effectuating this Stipulation and
7 is intended by Complainant and Respondent to be non-binding upon
8 him in any actions against Respondent by third parties and shall
9 not be deemed, used, or accepted as an acknowledgement or
10 admission. The Real Estate Commissioner shall not be required to
11 provide further evidence to prove such allegations.

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

22 6. The Order or any subsequent Order of the Real
23 Estate Commissioner made pursuant to this Stipulation And
24 Agreement shall not constitute an estoppel, merger or bar to any
25 further administrative or civil proceedings by the Department of
26 Real Estate with respect to any matters which were not
27

1 specifically alleged to be causes for accusation in this
2 proceeding.

3 7. The below Determination of Issues contains a
4 determination that Respondent STEPHEN FRANCIS BIAFORA has
5 violated Code Sections 10145, 10159.5 and Regulations 2831 and
6 2832. Respondent STEPHEN FRANCIS BIAFORA, is aware that by
7 agreeing to this Stipulation And Agreement, if the findings set
8 forth below in the Determination of Issues become final, the
9 Commissioner may charge Respondent STEPHEN FRANCIS BIAFORA for
10 the costs of Audit LA 000003 and of any follow-up audit conducted
11 pursuant to Section 10148 of the Code to determine if Respondent
12 STEPHEN FRANCIS BIAFORA, is in compliance with the Real Estate
13 Law. The maximum cost of the audit will not exceed \$2,956.80.

14 DETERMINATION OF ISSUES

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

19 The conduct, acts or omissions of Respondent STEPHEN
20 FRANCIS BIAFORA under Part 1 of Division 4 of the Business and
21 Professions Code, as set forth in paragraphs one (1) through
22 eleven (11) in the Accusation, constitute cause to suspend or
23 revoke his real estate broker license and/or license rights under
24 the provisions of Code Sections 10177(d) for violations of Code
25 Sections 10145, 10159.5 and Regulations 2831 and 2832.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent STEPHEN FRANCIS BIAFORA under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Order, provided however, that said thirty (30) day suspension shall be stayed upon the following terms and conditions:

(a) Respondent STEPHEN FRANCIS BIAFORA, shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of his license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

(b) Respondent STEPHEN FRANCIS BIAFORA, shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

///

1 (c) Respondent STEPHEN FRANCIS BIAFORA, shall
2 obey all laws, rules and regulations governing the rights, duties
3 and responsibilities of a real estate licensee in the State of
4 California.

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

13 (e) Pursuant to Section 10148 of the Business and
14 Professions Code, Respondent shall pay the Commissioner's
15 reasonable cost for: a) the audit which led to this disciplinary
16 action and, b) a subsequent audit to determine if Respondent has
17 corrected the trust fund violations found in the Determination of
18 Issues. In calculating the amount of the Commissioner's
19 reasonable cost, the Commissioner may use the estimated average
20 hourly salary for all persons performing audits of real estate
21 brokers, and shall include an allocation for travel costs,
22 including mileage, time to and from the auditor's place of work
23 and per diem. Respondent shall pay such cost within 45 days of
24 receiving an invoice from the Commissioner detailing the
25 activities performed during the audit and the amount of time
26
27

1 spent performing those activities. The Commissioner may, in his
2 discretion, vacate and set aside the stay order, if payment is
3 not timely made as provided for herein, or as provided for in a
4 subsequent agreement between the Respondent and the Commissioner.
5 The vacation and the set aside of the stay shall remain in effect
6 until payment is made in full, or until Respondent enters into an
7 agreement satisfactory to the Commissioner to provide for
8 payment.

9 Should no order vacating the stay be issued, either in
10 accordance with this condition or any of the conditions herein
11 above, the stay hereby granted shall become permanent.

12 DATED: April 19, 2002 Sean Crahan
13 SEAN CRAHAN, Counsel for
14 Complainant.

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

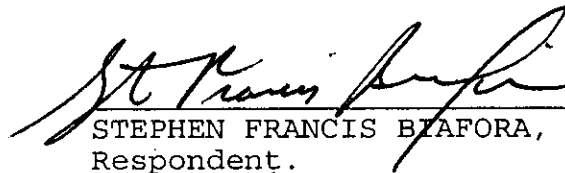
26 ///

27 ///

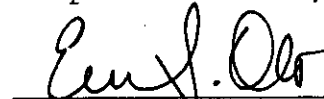
1 Respondent can signify acceptance and approval of the
2 terms and conditions of this stipulation and Agreement by faxing
3 a copy of the signature page, as actually signed by Respondent,
4 to the Department at the following telephone/fax number: (213)
5 576-6917. Respondent agrees, acknowledges and understands that
6 by electronically sending to the Department a fax copy of his
7 actual signature as it appears on the Stipulation and Agreement,
8 that receipt of the faxed copy by the Department shall be as
9 binding on Respondent as if the Department had received the
10 original signed Stipulation and Agreement.

11 Further, Respondent's counsel will, within 24 hours of
12 obtaining Respondent's original signature to the Stipulation and
13 Agreement, deliver the Stipulation and Agreement to the
14 Department.

15 DATED: 4-11-02


STEPHEN FRANCIS BIAFORA,
Respondent.

17
18 DATED: 4.14.02


ERIC S. OTO, ESQ. Counsel for
Respondent STEPHEN FRANCIS BIAFORA,
approved as to form.

19
20 //

21 //

22 //

23 //

24 //

25 //

26 //

27

* * * * *

The foregoing Stipulation And Agreement is hereby
adopted as my Decision as to Respondent STEPHEN FRANCIS BIAFORA,
and shall become effective at 12 o'clock noon on
May 29, 2002

IT IS SO ORDERED

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

April 26, 2002
Paula Reddish

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
FEB 14 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
STEPHEN FRANCIS BIAFORA, et al.,)
Respondents.)

Case No. H-29060 LA
OAH No. L-2001050600

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on **February 28 and March 1, 2002**, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

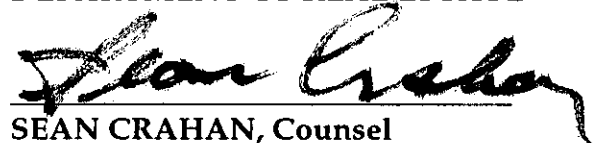
The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: February 14, 2002.

cc: Stephen Francis Biafora
Joseph R. Biafora, Jr.
Gary D. Lampert, Esq.
D. Fajardo
V. Weaver
Sacto./OAH

DEPARTMENT OF REAL ESTATE

By:


SEAN CRAHAN, Counsel

RE 501 (Rev. 8/97vj)

SACNO.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

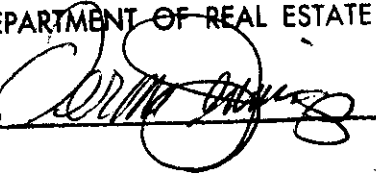
FILED
NOV 19 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)

STEPHEN FRANCIS BIAFORA, et al.,)

Respondents.)

Case No. H-29060 LA
OAH No. L-2001050600

By: 

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on **January 17 and 18, 2002**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: November 19, 2001.

cc: Stephen Francis Biafora
Joseph R. Biafora, Jr.
Gary D. Lampert, Esq.
D. Fajardo
V. Weaver
Sacto./OAH

DEPARTMENT OF REAL ESTATE

By:


SEAN CRAHAN, Counsel

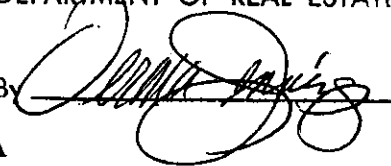
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
JUN 25 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
STEPHEN FRANCIS BIAFORA, et al.,)
)
Respondents.)

Case No. H-29060 LA
OAH No. L-2001050600

By: 

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on **October 9 and 10, 2001**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

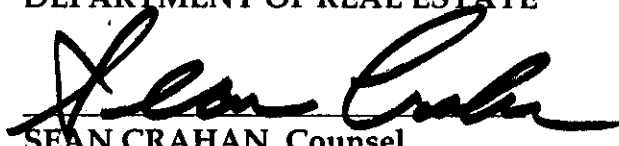
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: June 25, 2001.

cc: Stephen Francis Biafora
Joseph R. Biafora, Jr.
J. Philip Schlosser, Esq.
Gary D. Lampert, Esq.
D. Fajardo/V. Weaver
Sacto./OAH

DEPARTMENT OF REAL ESTATE

By: 

SEAN CRAHAN, Counsel

RE 501 (Rev. 8/97vj)

Handwritten signature/initials

FILED
MAY 17 2001

DEPARTMENT OF REAL ESTATE

By *[Handwritten signature]*

SEAN CRAHAN, SBN 49351
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6907 (direct)
-or- (213) 576-6982 (office)

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of	)	No. H-29060 LA
	)	
STEPHEN FRANCIS BIAFORA,	)	<u>ACCUSATION</u>
individually and doing business	)	
as J & S Props & Mgmt; and	)	
JOSEPH R. BIAFORA, JR.,	)	
individually and doing business	)	
as J & S Props & Mgmt,	)	
	)	
Respondents.	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for cause of accusation against STEPHEN FRANCIS BIAFORA, individually and doing business as J & S Props & Mgmt; and JOSEPH R. BIAFORA, JR., individually and doing business as J & S Props & Mgmt, is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

1 2.

2 STEPHEN FRANCIS BIAFORA, sometimes referred to as
3 Respondent BIAFORA, is presently licensed and/or has license
4 rights under the Real Estate Law (Part 1 of Division 4 of the
5 California Business and Professions Code, hereafter cited as
6 "Code"). At all times mentioned, Respondent was licensed by the
7 Department of Real Estate (Department) as a real estate broker,
8 individually and doing business as J & S Props & Mgmt, since
9 August 1, 2000.

10 3.

11 JOSEPH R. BIAFORA, JR., sometimes referred to as
12 Respondent BIAFORA, JR., is presently licensed and/or has license
13 rights under the Real Estate Law. At all times mentioned,
14 Respondent was licensed by the Department as a real estate
15 broker, individually and doing business as J & S Props & Mgmt,
16 since August 1, 2000.

17 4.

18 At no time herein pertinent were either Respondent
19 licensed to do business under the fictitious business names of
20 "J & S Properties And Management" or "J & S Property Management",
21 hereafter collectively referred to as "J & S".

22 5.

23 At all times mentioned herein, in the State of
24 California, Respondents jointly, as partners, doing business
25 under the fictitious business names of "J & S", engaged in the
26 business of a real estate broker within the meaning of Code
27

1 Section 10131(b), including the operation of a rental property
2 management business in that Respondents negotiated on behalf of
3 owners with tenants and collected rents from tenants on behalf of
4 owners, for or in expectation of compensation.

5 6.

6 From July 26, 2000, through September 15, 2000, an
7 auditor from the Department examined the books and records of
8 Respondents doing business as J & S, covering a period of time
9 from July 1, 1998, through June 30, 2000 (hereafter the "audit
10 period"), and found that Respondents violated the following Code
11 Sections and Regulations from Title 10, Chapter 6 of the
12 California Code of Regulations (hereafter the Regulations).

13 7.

14 In connection with the collection of rents from tenants
15 on behalf of owners, Respondents received funds in trust from or
16 on behalf of owners and deposited them into one of four bank
17 accounts:

18 (a) Estate of Ward, Union Bank 3071026532, BA#1.
19 Signatories were Respondent BIAFORA, JR., and DiBianca, trustee
20 of the estate. BA#1 was used for receipt and disbursement of
21 rents on behalf of the estate.

22 (b) Parthenia Manor, BA#2 (no bank account involved
23 here). Respondents collected rents and forwarded them to J.
24 Biafora, Sr., owner of Parthenia Manor.

25 (c) Blaustein Family Trust, California Federal
26 288418306, BA#3. Signatories for BA#3 were the trustees/owners
27

1 of the real property managed by Respondents. Neither Respondent
2 was a signatory on the account.

3 (d) Falcon Financial Building, Fidelity Federal Bank
4 0240083772, BA#4. Signatories for BA#4 were the trustees/owners
5 of the real property managed by Respondents. Neither Respondent
6 was a signatory on the account.

7 (e) Delano Village Shopping Center, Fidelity Federal
8 Bank 0240083802, BA#5. Signatories for BA#5 were the
9 trustees/owners of the real property managed by Respondents.
10 Neither Respondent was a signatory on the account.

11 8.

12 Respondents wrote checks on BA#1, BA#3, BA#4 and BA#5
13 and delivered them to the owners for their signatures.

14 9.

15 Pursuant to the written management agreements between
16 Respondents and the owners of properties managed through the
17 above accounts, the rents were required to be deposited and
18 disbursed through a trust account. None of the accounts
19 identified in Paragraph 7, above, were designated as trust
20 accounts, with Respondents as trustees, in violation of Code
21 Section 10145 and Regulation 2832.

22 10.

23 Respondents' failure to deposit and disburse rents
24 through trust accounts was in violation of their management
25 agreements with the owners and was negligence in transactions for
26 which a real estate license was required.

11.

During the audit period, Respondents failed to maintain adequate control records, as are required by Regulation 2831, for BA#1, BA#3, BA#4 and BA#5 in that the control records failed to include the date trust funds were received from the tenants and a daily balance, in violation of Regulation 2831.

12.

The conduct or omissions of Respondents as set forth above subject their real estate licenses and license rights to suspension or revocation under the following Code Sections:

(a) Code Section 10177(d) for willful violations of the following Code Sections and Regulations:

(i) Code Section 10159.5 and Regulation 2731 for failure to have real estate licenses in the fictitious business names of "J & S Properties And Management" or "J & S Property Management", as set forth in paragraphs 4 and 5, above.

(ii) Regulation 2831 for the inadequate control records, as set forth in paragraph 11, above.

(iii) Code Section 10145 and Regulation 2832 for failure to deposit and disburse trust funds from a trust account, as set forth in paragraphs 7 through 10.

(b) Code Section 10177(g) for negligence in failing to use a trust account for the receipt and disbursal of rents, as set forth in paragraphs 7, 8, 9 and 10, above.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7

8
9
10
11
12
13
14
15
16
17
18

19
20

22

24
25
26
27

- 6 -