

"Certified to be a true and correct copy of the original"

J. Elaine Curvas 1-11-95

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
SECURITIES SECTION
BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
STATE OF OREGON

In the Matter of:)	O-94-0032
)	
DONALD G. VARCE,)	FINAL ORDER BY DEFAULT
)	ORDER TO CEASE AND DESIST
)	DENIAL OF EXEMPTIONS
)	and
Respondent.)	ASSESSMENT OF CIVIL PENALTIES

On November 9, 1994 the Director of the Department of Consumer and Business Services for the State of Oregon, acting by the authority of the Securities Law, Chapter 59 of the Oregon Revised Statutes (hereinafter cited as ORS Chapter 59), issued Administrative Order O-94-0032 to Cease and Desist, Denying Exemptions and Assessing Civil Penalties, with Notice of Right to Hearing.

Respondent Donald G. Varce (VARCE) was duly served with a certified copy of Administrative Order O-94-0032 and Notice of Right to Hearing. Service was effected by mailing the Order and Notice of Right to Hearing by certified mail to his last known address and Mr. Varce signed the return receipt that was returned to the Division of Finance and Corporate Securities.

On November 18, 1994 the Division of Finance and Corporate Securities received an envelope bearing the return address of Donald G. Varce which contained the certified copy of Administrative Order O-94-0032. Each page of the order was stamped with the words "Refusal for Cause without Dishonor U.C.C. 5-301", followed by the initials "DV". The envelope also contained an affidavit signed by Donald Varce. The affidavit was deemed by the Director to constitute a request for hearing in the Matter of Donald G. Varce O-94-0032.

Respondent Donald G. Varce was duly served with notice of the time and date

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1 of hearing by U.S. certified mail and signed the return receipt. The notice of
2 hearing also included notice of a pre-hearing conference at 9:00 a.m. on the
3 Friday preceeding the day of the administrative hearing. VARCE did not appear
4 at the pre-hearing conference and did not otherwise communicate with the
5 Division of Finance and Corporate Securities.

6 Respondent VARCE did not appear at the time and place designated for the
7 administrative hearing on Administrative Order 0-94-0032 and did not otherwise
8 communicate with the Division of Finance and Corporate Securities.

9 **NOW THEREFORE**, after consideration of the Investigative Report and
10 accompanying exhibits submitted in this matter by Carol A. Rives, the Director
11 hereby issues the following Findings of Fact, Conclusions of Law and Final Order:

12 **FINDINGS OF FACT**

13 The Director **FINDS** that:

14 1. Donald G. Varce is an Oregon resident who was licensed to sell
15 securities in Oregon as a registered representative for Securities America, Inc.
16 from July 15, 1991 until July 24, 1994. VARCE may be served with process at
17 17475 Monticello, Gladstone, OR 97027; telephone (503) 655-4403;

18 2. On July 9, 1991 Administrative Order 0-90-0037, including Order to
19 Cease and Desist, Denial of Exemptions and Assessment of Civil Penalty, was
20 entered by signed consent between the DIRECTOR and VARCE. VARCE signed the
21 Consent to Entry of Order 0-90-0037 on June 6, 1991. The Order was entered as a
22 result of Varce's participation in the unlicensed sale of unregistered
23 securities that occurred between January 1, 1975 and January 1, 1991;

24 3. Under the terms of Administrative Order 0-90-0037 the DIRECTOR issued a
25 salesperson license under which VARCE would be employed as a registered
26 representative for Securities America, Inc., a licensed broker-dealer in

1 Oregon. The license issued to VARCE was subject to the following restrictions:
 2 VARCE was prohibited from selling any investment products that were not
 3 authorized by Securities America, Inc. and VARCE was denied the privilege of
 4 selling any securities in reliance on exemptions provided under ORS Chapter 59,
 5 with the sole exception being the exemption that is described at ORS 59.025(4)
 6 for exchange-listed securities;

7 4. During the period commencing on or about July 8, 1991 and continuing
 8 through November 24, 1993 VARCE issued and sold promissory notes secured by
 9 mortgages on real estate located in Oregon. The promissory notes were sold to
 10 the following private investors:

11	DATE	INVESTOR/ADDRESS	AMOUNT
12	7/08/91	Milton Hopper, Florence OR	\$ 3,000 (Roll-over)
13	8/09/91	Milton Hopper, Florence OR	2,000
14	1/13/92	Thelma Howell, Oregon City OR	18,000
15	2/06/92	Hugh Brown, Milwaukie OR	5,000
16	2/13/92	Winifred Brown, Milwaukie OR	5,000
17	4/07/92	Marion Gent, West Linn OR	10,000
18	5/03/92	Bob Roome, North Bend OR	10,000
19	5/27/92	Carla Somerville, Cordova AK	27,500 (Roll-over)
20	6/04/92	Kenneth Jones, San Jose CA	10,000
21	6/21/92	Eunice Kelley, Stanwood WA	15,000 (Roll-over)
22	10/17/92	Rosalie Albee, Milwaukie OR	4,000
23	7/14/93	John McCarter, Hutchinson KS	19,000 (Roll-over)
24	7/30/93	Knoll Family Trust, Vancouver WA	10,000
25	7/20/93	Thomas Hall, Newton KS	22,500
26	9/13/93	Thelma Howell, Oregon City OR	18,000 (Roll-over)
	10/04/93	Thelma Hurt Trust, Oregon City	10,000 (Roll-over)
	10/20/93	Charles McIntyre, Portland OR	16,000 (Roll-over)
	10/20/93	Georgianne Swaren, Salem OR	7,600 (Roll-over)
	11/01/93	George Lindemulder, Columbus MT	22,950 (Roll-over)
	11/24/93	LaVern Streight, Gladstone OR	15,000
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1 5. VARCE issued and sold promissory notes secured by mortgages on real
2 property described as Lots 30, 31, 32, Block 5, Hollywood Gardens, commonly
3 known as 9875 Citadel in Clackamas County, Oregon, to the following investors:

4 DATE	INVESTOR	AMOUNT OF NOTE
5 1/13/92	Thelma Howell, Oregon City, OR	\$18,000
5/03/92	Bob Roome, North Bend, OR	10,000
6 5/27/92	Carla Somerville, Cordova, AK	27,500
7 10/17/92	Rosalie Albee, Milwaukie, OR	4,000

8 6. Varce issued and sold promissory notes secured by mortgages on real
9 property described as Lots 1 and 2, Block 9, Bay City Addition, Tillamook
10 County, Oregon to the following investors:

11 8/09/91	Milton Hopper, Florence, OR	\$ 5,000
2/06/92	Hugh Brown, Milwaukie, OR	5,000
12 2/13/92	Winifred Brown, Milwaukie, OR	5,000

13 7. Varce issued and sold promissory notes secured by mortgages on real
14 property described as Lot 4, Cherie Terrace, Multnomah County, Oregon to the
15 following investors:

16 7/02/93	Thomas Hall, Newton, KS	\$22,500
7/14/93	John McCarter, Hutchinson, KS	19,000

18 8. Varce issued and sold promissory notes secured by mortgages on real
19 property described as Lots 1, 2, 7, and 8, Block 133, Clackamas County, Oregon
20 to the following investors:

21 6/04/92	Kenneth Jones, San Jose, CA	\$10,000
6/21/92	Eunice Kelley, Stanwood, WA	15,000
22 10/04/93	Thelma Hurt, Oregon City, OR	10,000

23 9. Varce issued and sold promissory notes secured by mortgages on real
24 property described as Section 5, Tract 35, Range 2E of W.M., Clackamas County,
25 Oregon to the following investors:

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1 7/30/93 Knoll, Vancouver, WA \$10,000
2 10/20/93 Charles McIntyre, Portland, OR 16,000

3 10. Varce issued and sold promissory notes secured by mortgages on real
4 property described as NE quarter of Section 21, Tract 1S, Range 2, Multnomah
5 County, Oregon to the following investors:

6 11/01/93 George Lundemulder, Columbus, MT \$22,950
7 11/24/93 LaVerne Streight, Gladstone, OR 15,000

8 11. VARCE did not provide the investors described in paragraph four with
9 the following information pertaining to the real property that was used to
10 secure the promissory notes he sold to the investors:

- 11 a. priority of the lien created by the mortgage issued and the total
12 amount of all senior liens against the property, including
13 outstanding taxes;
- 14 b. terms of any senior liens against the property and assignments
15 thereof, and a statement of the risk of loss on foreclosure of such
16 liens;
- 17 c. statement of taxes owing against the property, and a statement of
18 value of the real property based on current tax assessed value or
19 an independent appraisal of the property;
- 20 d. statement of any balloon payment owed under the promissory note,
21 including dates and amounts of such payments;
- 22 e. the debtor's payment record, if any, on all other notes, mortgages
23 or liens against the property for the two-year period immediately
24 preceding the sale of the promissory note to the investor;
- 25 f. current credit report on the debtor prepared by a credit reporting
26 agency;
- 27 g. financial statement of the debtor that is current within 90 days of
28 the transaction;
- 29 h. statement of whether the investor's interest in the property will
30 be insured against casualty loss;

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1 12. The promissory notes described in paragraph four hereinabove that
2 VARCE issued and sold to investors were not authorized for sale by Securities
3 America, Inc.;

4 13. The promissory notes which VARCE issued and sold have never been
5 registered with the Director for sale in Oregon and are not listed on any
6 of the securities exchanges approved by the Director;

7 14. VARCE has never been licensed as a mortgage broker in Oregon nor as
8 a salesperson for a licensed mortgage broker in Oregon;

9 15. On or about July 15, 1994 Securities America, Inc. requested that
10 VARCE resign as their registered representative and VARCE submitted his
11 resignation on July 24, 1994.

12 **CONCLUSIONS OF LAW**

13 The Director **CONCLUDES** that:

14 1. The promissory notes secured by mortgages described in paragraph four
15 of these Findings of Fact which were issued and sold by Donald G. Varce are
16 "real estate paper" as defined at ORS 59.015(13) which is included in the
17 definition of "securities" under ORS 59.015(17);

18 2. Respondent VARCE made untrue statements of material facts or omitted
19 to state material facts necessary in order to make the statements made, in the
20 light of the circumstances under which they are made, not misleading, in
21 connection with the sale of real estate paper in Oregon when he failed to
22 provide to investors the information described in paragraph 11 of the Findings
23 of Fact hereinabove, all in violation of OAR 441-35-021 and ORS 59.135(2);

24 3. The use of the exemption from registration requirements which is
25 authorized at ORS 59.035(7) for the sale of real estate paper is not available
26 to Donald G. Varce because Administrative Order O-90-0037 prohibited VARCE from

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1 using any exemption under Oregon Securities Law except the exemption provided
2 at ORS 59.025(4) for exchange-listed securities, and also because VARCE failed
3 to disclose to investors all of the information listed in OAR 441-35-021, as
4 described in paragraph 11 of these Findings of Fact;

5 4. The promissory notes secured by mortgages on real property described
6 in paragraph four of these Findings of Facts which VARCE issued and sold to
7 investors do not qualify for the exemption provided at ORS 59.025(4) for
8 exchange-listed securities, which was the only exemption available to VARCE
9 under Order 0-90-0037;

10 5. Respondent VARCE offered and sold unregistered securities in the form
11 of real estate paper to persons other than persons enumerated in ORS 59.035(4),
12 as described in paragraph four of the Findings of Fact hereinabove, which sales
13 did not qualify for any exemption from registration requirements under ORS
14 Chapter 59, all in violation of ORS 59.055;

15 6. Respondent VARCE violated the terms of Administrative Order 0-90-0037
16 when he offered and sold unregistered securities in the form of promissory notes
17 secured by real estate to investors as described in paragraph four of the
18 Findings of Fact hereinabove;

19 7. Respondent VARCE violated the terms of the Conditional Salesperson
20 License issued by the Director July 15, 1991 when he offered and sold securities
21 that were not authorized for sale by Securities America, Inc., the licensed
22 broker-dealer to which Varce was licensed as a salesperson;

23 8. Respondent VARCE conducted business as a Mortgage Broker in Oregon
24 without the appropriate license and in violation of ORS 59.165 when he engaged
25 all or part of the time, for the account of others or for his own account, in
26 the business of selling real estate paper as an issuer, principal or agent to

1 persons other than persons enumerated in ORS 59.035(4).

2 **ORDER**

3 **NOW THEREFORE, THE DIRECTOR ORDERS:**

4 1. Pursuant to the authority of ORS 59.245, Respondent DONALD G. VARCE
5 shall **CEASE AND DESIST** from participating in any violations of the Oregon
6 Securities Law, ORS Chapter 59.

7 2. Pursuant to the authority of ORS 59.045, Respondent DONALD G. VARCE
8 is **DENIED** the use of every exemption authorized under ORS 59.025, ORS 59.035
9 and the Oregon Administrative Rules.

10 3. Pursuant to the authority of ORS 59.995, Respondent DONALD G. VARCE
11 is **ORDERED** to pay the following civil penalties:

- 12 a. \$500.00 for each violation of ORS 59.055, for a total of \$10,000;
- 13 b. \$500.00 for each violation of ORS 59.165, for a total of \$10,000;
- 14 c. \$10,000.00 for violations of Administrative Order 0-90-0037
15 and for violations of Conditional Salesperson license issued
16 July 15, 1991, and
- 17 d. \$1,000.00 for each violation of ORS 59.135, for a total of \$20,000.

18 ORS 59.995(4) provides that an order assessing a civil penalty which becomes
19 final by operation of law constitutes a judgment and may be recorded with the
20 county clerk in any county of this state, unless the amount of penalty is paid
21 within ten days after the order becomes final. Execution may be issued upon

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1 the order in the same manner as execution upon a judgment of a court of record.
2 NOTICE: You are entitled to judicial review of this order. Judicial review
3 may be obtained by filing a petition for review within 60 days from the service
4 of this order. Judicial review is pursuant to the provisions of ORS 183.482 to
5 the Oregon Court of Appeals.

6 Dated this 11th day of January, 1995 at Salem, Oregon.
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11 
12 KERRY BARNETT, DIRECTOR
13 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
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