

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
2 DIVISION OF FINANCE AND CORPORATE SECURITIES
3 SECURITIES SECTION
4 BEFORE THE DIRECTOR OF THE DEPARTMENT OF
5 CONSUMER AND BUSINESS SERVICES
6 STATE OF OREGON

7 In the Matter of:) O-96-0022
8)
9 BERJAC OF OREGON,) ORDER TO CEASE AND DESIST
10 MICHAEL S. HOLCOMB,) ASSESSMENT OF CIVIL PENALTIES
11 GARY L. HOLCOMB, AND) AND
12 ROBERT H. HOLCOMB) CONSENT TO ENTRY OF ORDER
13 Respondents.)

14 WHEREAS the Director of the Department of Consumer and
15 Business Services has conducted an investigation of certain
16 business activities conducted by Berjac of Oregon and by
17 Michael S. Holcomb, Gary L. Holcomb and Robert H. Holcomb,
18 and has determined that Berjac of Oregon, Michael S.
19 Holcomb, Gary L. Holcomb and Robert H. Holcomb conducted
20 business in the State of Oregon in violation of the Oregon
21 Securities Law;

22 WHEREAS Berjac of Oregon, Michael S. Holcomb, Gary L.
23 Holcomb and Robert H. Holcomb wish to resolve and settle
24 this matter with the DIRECTOR;

25 NOW THEREFORE, as evidenced by the authorized
26 signature(s) subscribed on this Order, Berjac of Oregon,
27 Michael S. Holcomb, Gary L. Holcomb and Robert H. Holcomb
28 hereby CONSENT to entry of this Order to Cease and Desist
29 and Assessment of Civil Penalties upon the Director's
30 Findings of Fact and Conclusions of Law as stated
31 hereinafter.



FINDINGS OF FACT

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The Director **FINDS** that:

1. Respondent Berjac of Oregon (Berjac) is an Oregon partnership with principal offices at 2620 River Road #201, Eugene, OR 97404;

2. Respondent Michael S. Holcomb is a partner in Berjac and resides at 86409 Ainsley Lane, Eugene, OR 97402;

3. Respondent Gary L. Holcomb is a partner in Berjac and resides at 3201 East Virginia Street, Denver, Colorado 80208;

4. Respondent Robert H. Holcomb is a partner in Berjac and resides at 365 Mistletoe Circle, Corvallis, OR 97330;

5. On September 12, 1994, Berjac filed a renewal application to register up to \$4 million of unsecured short-term notes, together with renewal applications to license Respondents Michael S. Holcomb and Robert H. Holcomb as salespersons to Berjac. Included with the documents filed as part of the renewal application was a prospectus describing the proposed securities offering and the business operations of Berjac including financial statements for the fiscal year ended March 31, 1994 (the 1994 Prospectus). The financial statements were accompanied by an independent auditors' report of Kohnen, Larson and Company, P.C. dated August 2, 1994 (the 1994 audited financial statements);

6. On September 12, 1994, the Director issued an order of registration renewal authorizing Berjac to sell up to

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Labor and Industries Building
350 Winter Street, NE, Suite 410
Salem, OR 97310
Telephone: (503) 378-4387



1 \$4 million of unsecured short-term notes in Oregon (the
2 registered securities) and also issued orders of salesperson
3 renewals to Respondents Michael S. Holcomb and Robert H.
4 Holcomb. The order of registration renewal included a
5 condition requiring that the securities be offered and sold
6 in the manner and under the terms and conditions presented
7 in the registration application;

8 7. In its 1994 Prospectus, Berjac described its
9 business operations as follows:

10 a) Berjac's primary business is the financing
11 of insurance premiums for insurance companies or
12 individuals who are unable or do not wish to pay an
13 entire insurance premium in one lump sum;

14 b) Beginning in 1990, Berjac commenced the
15 financing of short-term real estate construction
16 projects located within a 125 mile radius of
17 Berjac's offices under which Berjac secures its
18 financing with a first lien on the property at no
19 more than 75% of the estimated appraisal value of
20 the completed construction project;

21 c) Beginning in 1992, Berjac commenced the
22 purchase of automobile financing contracts from an
23 affiliated partnership, Berjac of Colorado;

24 8. Pursuant to the order of registration dated
25 September 12, 1994, Berjac sold the registered securities to
26 investors.



1 9. On October 2, 1995, Berjac filed an application to
2 renew the order of registration. On January 24, 1996,
3 Berjac filed a revised copy of its prospectus and financial
4 statements for the fiscal year ended March 31, 1995. The
5 financial statements were accompanied by an independent
6 auditors' report by Kohnen, Larson, MacDonald, Wright and
7 Company, P.C. dated December 14, 1995 (the 1995 audited
8 financial statements);

9 10. A note to the 1995 audited financial statements
10 states that in May 1994 Berjac purchased an oceanfront
11 residential property in Curry County, Oregon for \$295,000
12 for the purpose of remodeling and reselling the property.
13 The note further disclosed that "[t]otal investment to
14 March 31, 1995 is \$390,289, including \$295,000 original
15 purchase price, and \$95,289 remodeling costs....[T]hrough
16 November 1, 1995 reconstruction costs since March 31, 1995
17 totalled \$238,024 and insurance settlement proceeds totaled
18 \$248,615. The net investment at November 1, 1995 is
19 \$379,698. On December 1, 1995 the individual partners
20 purchased this property from Berjac for \$397,503.50";

21 11. The purchase of the Curry County residential
22 property was not disclosed in either the 1994 Prospectus or
23 as a subsequent event to the March, 1994 audited financial
24 statements.

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1
2 **CONCLUSIONS OF LAW**

3 The Director **CONCLUDES** that:

4 1. Respondent Berjac, acting by and through its
5 authorized agents, and Respondents Michael S. Holcomb, Gary
6 L. Holcomb and Robert H. Holcomb violated ORS 59.135(2) by
7 selling the registered securities by means of the 1994
8 Prospectus which omitted to state material facts necessary
9 to make the statements made, in the light of the
10 circumstances under which they were made, not misleading
11 when it described Berjac's business operations as being
12 those activities stated in paragraph 7 of the Findings of
13 Fact without also disclosing that Berjac was engaging in
14 activities not described in said paragraph 7, to wit the
15 purchase of residential real estate for purposes of resale.

16 2. Respondent Berjac, acting by and through its
17 authorized agents, and Respondents Michael S. Holcomb, Gary
18 L. Holcomb and Robert H. Holcomb violated ORS 59.055(1) by
19 selling the registered securities in violation of a
20 condition of Berjac's order of registration by offering and
21 selling the registered securities contrary to, or different
22 than, the manner, terms and conditions presented in Berjac's
23 registration application in that the registered securities
24 were offered and sold by means of the 1994 Prospectus which
25 described Berjac's business operations as being those
26 activities stated in paragraph 7 of the Findings of Fact
without also disclosing that Berjac was engaging in



1 activities not described in said paragraph 7, to wit the
2 purchase of residential real estate for purposes of resale.

3 3. Respondent Berjac, acting by and through its
4 authorized agents, and Respondents Michael S. Holcomb, Gary
5 L. Holcomb and Robert H. Holcomb violated ORS 59.451 by
6 making or filing or causing to be made or filed with the
7 Director the 1994 Prospectus which omitted to state material
8 facts necessary to make the statements made, in the light of
9 the circumstances under which they were made, not misleading
10 when it described Berjac's business operations as being
11 those activities stated in paragraph 7 of the Findings of
12 Fact without also disclosing that Berjac was engaging in
13 activities not described in said paragraph 7, to wit the
14 purchase of residential real estate for purposes of resale.

15 4. Respondents Michael S. Holcomb, Gary L. Holcomb
16 and Robert H. Holcomb, as the partners of Berjac, directly
17 or indirectly controlled Berjac when it sold the registered
18 securities by means of the 1994 prospectus which omitted to
19 state material facts necessary to make the statements made,
20 in the light of the circumstances under which they were
21 made, not misleading, in violation of ORS 59.115(3).

22 **ORDER**

23 **NOW THEREFORE, THE DIRECTOR ORDERS that:**

- 24 1. Respondents Berjac, Michael S. Holcomb, Gary L.
25 Holcomb and Robert H. Holcomb shall **CEASE AND DESIST** from:
26 a) Offering and/or selling securities in the



1 State of Oregon in violation of ORS Chapter 59; and
2 b) Violating any of the provisions of ORS Chapter
3 59 and Oregon Administrative Rules Chapter 441.

4 2. Respondents Berjac, Michael S. Holcomb, Gary L.
5 Holcomb and Robert H. Holcomb are **ORDERED TO PAY**, jointly
6 and severally, the sum of \$5,000.00 for violations stated
7 herein; and

8 The entry of this Order in no way limits further
9 remedies which may be available to the Director under Oregon
10 law.

11 Dated this 14th day of June, 1996 at Salem,
12 Oregon.

13 
14 **KERRY BARNETT, DIRECTOR**
DEPARTMENT OF CONSUMER & BUSINESS SERVICES

15
16 **PARTNERSHIP CONSENT TO ENTRY OF ORDER**

17 I, Michael S. Holcomb, state that I am a partner
18 of Respondent Berjac of Oregon, and I am authorized to act
19 on its behalf; that I have read the foregoing Order and that
20 I know and fully understand the contents thereof; that the
21 factual allegations contained herein are true and correct;
22 that Respondent has been advised of its right to a hearing
23 and of its right to be represented by counsel in this
24 matter, and that Respondent voluntarily consents to the
25 entry of this Order without any force or duress; that
26 Respondent understands that the Director reserves the right

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97310
Telephone: (503) 378-4387



1 to take further action to enforce this Order or to take
2 appropriate action upon discovery to enforce other
3 violations of the Oregon Securities Law; and that Respondent
4 will fully comply with the terms and conditions stated here.

5 Respondent and MICHAEL S. HOLCOMB further assure the
6 Director that Respondent will not transact any business in
7 the State of Oregon unless such transactions are in full
8 compliance with Chapter 59 of the Oregon Revised Statutes.
9 I understand that this Consent Order is a public document.

10 Dated this 11 day of JUNE, 1996.
11 _____
12 , Partner
13 Berjac of Oregon

14 **PARTNERSHIP ACKNOWLEDGMENT**

15 There appeared before me this 11 day of JUNE,
16 1996 MICHAEL S. HOLCOMB, who was first duly sworn on oath,
17 and stated that he was and is a partner of Berjac of Oregon,
18 that he is authorized and empowered to sign this Consent to
19 Entry of Order and to bind Berjac of Oregon to the terms
20 hereof.

21 SUBSCRIBED to before me this 11 day of JUNE, 1996.

22 _____
Nancy McKittrick



23 Notary Public for OREGON

24 NANCY McKITTRICK
25 Printed Name of Notary Public

26 My commission expires: 3-28-97

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1 **CONSENT TO ENTRY OF ORDER BY MICHAEL S. HOLCOMB**

2 I, Michael S. Holcomb, state that I am a Respondent herein;
3 that I have read the foregoing order and that I know and
4 fully understand the contents thereof; that I admit that the
5 factual allegations contained herein are true and correct;
6 that I have been advised of my right to a hearing; that I
7 consent to the entry of this Order voluntarily, and without
8 any force or duress; that I understand that the Director
9 reserves the right to take further actions to enforce this
10 Order, or, upon discovery, to enforce other violations of
11 the Oregon Securities Law by me; that I will fully comply
12 with the terms and conditions stated herein. I further
13 assure the Director that I will not transact business in the
14 State of Oregon unless such transactions are in full
15 compliance with ORS Chapter 59. I understand that this
16 Consent Order is a public document.

17 Dated this 4 day of JUNE, 1996

18
19 

20 Michael S. Holcomb

21 SUBSCRIBED TO BEFORE ME this 04 day of JUNE, 1996

22 

23 Notary Public for Oregon

24 NANCY MCKITTRICK

25 Printed Name of Notary Public



26 My commission expires: 3-28-97

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1 **CONSENT TO ENTRY OF ORDER BY ROBERT H. HOLCOMB**

2 I, Robert H. Holcomb, state that I am a Respondent herein;
3 that I have read the foregoing order and that I know and
4 fully understand the contents thereof; that I admit that the
5 factual allegations contained herein are true and correct;
6 that I have been advised of my right to a hearing; that I
7 consent to the entry of this Order voluntarily, and without
8 any force or duress; that I understand that the Director
9 reserves the right to take further actions to enforce this
10 Order, or, upon discovery, to enforce other violations of
11 the Oregon Securities Law by me; that I will fully comply
12 with the terms and conditions stated herein. I further
13 assure the Director that I will not transact business in the
14 State of Oregon unless such transactions are in full
15 compliance with ORS Chapter 59. I understand that this
16 Consent Order is a public document.

17 Dated this 5th day of June, 1996

18 Robert H. Holcomb
19 Robert H. Holcomb

20 SUBSCRIBED TO BEFORE ME this 5 day of JUNE, 1996

21 Nancy McKittrick

22 Notary Public for Oregon



NANCY MCKITTRICK
 Printed Name of Notary Public

26 My commission expires: 3-28-97



