

A05-0912

**State of Minnesota
In Supreme Court**

All Parks Alliance for Change,

Petitioner,

v.

Unipro Manufacturing Housing Communities
Income Fund, d/b/a Ardmore Village,

Respondent.

**APPENDIX TO BRIEF OF PETITIONER
ALL PARKS ALLIANCE FOR CHANGE**

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INDEX TO APPENDIX

Opinion of Minnesota Court of Appeals, dated March 14, 2006 A. 1

Findings of Fact, Conclusions of Law and Order for Judgment and
Memorandum of the Honorable Robert R. King, Jr., dated December 17, 2004 A. 6

Order on amended findings and Memorandum of the Honorable
Robert R. King, Jr., dated March 1, 2005 A. 23

Findings and Order Regarding Fees and Costs and Judgment of the
Honorable Robert R. King, Jr., dated March 4, 2005 A. 26

Order granting temporary injunctive relief and setting the matter for trial,
dated March 31, 2004 A. 31

Order denying summary judgment, dated September 3, 2004 A. 37

Verified Complaint, dated February 13, 2004 A. 38

Answer, dated March 9, 2004 A. 44

Plaintiff's Second Amended Notice of Motion and Motion for a
Temporary Injunction, dated February 18, 2004 A. 47

Notice of Motion and Motion for Amended Findings or, in the
Alternative, New Trial, dated January 13, 2005 A. 48

APAC's Notice of Motion and Motion for Summary Judgment and a
Permanent Injunction, dated July 28, 2004 A. 50

Affidavit of Ned Moore A. 52

Affidavit of Amanda Jackson A. 55

Affidavit of Jess Luce A. 58

Affidavit of Valerie Sims, dated February 13, 2004	A. 62
Uniprop website printout (Exhibit A)	A. 63
Legislative history on Chapter 327C: Bill Summary dated February 15, 1982 (Exhibit B)	A. 65
Legislative history on Chapter 327C: Senate Memorandum from Office of Senator Gene Merriam (Exhibit C)	A. 71
 Affidavit of Valerie Sims, dated July 28, 2004	 A. 75
 Defendant’s Answers to Plaintiff’s Interrogatories and Request for Production of Documents, Set I	 A. 77
 By-Laws of All Parks Alliance for Change	 A. 86
 Expenses incurred by Uniprop’s prohibition of leafleting in Ardmor	 A. 91
 Ardmor map	 A. 92
 APAC flyers for Ardmor	 A. 93
 Ardmor Notice to Ardmor Village Residents – no contact list	 A. 102
 Lakeville City Ordinance 3-13-10	 A. 104
 Affidavit of Mary McGaffey in Opposition to Plaintiff’s Motion for Temporary Injunctive Relief	 A. 112
 Affidavit of Thomas F. DeVincke in Opposition to Plaintiff’s Motion for Summary Judgment and Permanent Injunctive Relief	 A. 114
 Ardmor Village Management Notice of Rule Change	 A. 116
 Ardmor Village Community Covenants	 A. 117
 The Manufactured Home Parks Handbook	 A. 130

P

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.
ALL PARKS ALLIANCE FOR CHANGE,
Respondent,
v.
**UNIPROP MANUFACTURED HOUSING
COMMUNITIES INCOME FUND, d/b/a
Ardmor Village,**
Appellant.
No. A05-912.

March 14, 2006.

Background: Nonprofit organization that sought to inform manufactured home park residents about their legal rights filed suit alleging that park owner's rule illegally restricted leafleting and canvassing in the park. The District Court, Dakota County, found that the restrictions were unreasonable and imposed new restrictions, and granted the organization attorney fees. Nonprofit organization appealed.

Holdings: The Court of Appeals, Kalitowski, J., held that:

- (1) organization was prevailing party in suit, warranting award of attorney fees;
 - (2) evidence was sufficient to support amount of attorney fee award;
 - (3) restrictions on organization's canvassing and leafleting activities did not violate organization's First Amendment free speech rights; and
 - (4) restrictions on organization's activities were reasonable.
- Affirmed.

[1] Costs ⇌ 194.42

102k194.42 Most Cited Cases

Nonprofit organization that sought to inform manufactured home park residents about their legal rights was prevailing party in its suit against park owner in which it had alleged the owner's rule illegally restricted leafleting and canvassing in the park, warranting award of attorney fees under

private-attorney-general statute; although trial court held park owner could continue to enforce no-contact list, the trial court found in the nonprofit organization's favor when it determined the park owner's rule was unreasonably restrictive. M.S.A. § 8.31, 327C.13.

[2] Costs ⇌ 194.42

102k194.42 Most Cited Cases

Evidence was sufficient to support determination that \$31,233 rather than \$45,249, the amount claimed by nonprofit organization, who was prevailing party in its suit against manufactured home park owner in which it alleged that the owner's rule illegally restricted leafleting and canvassing in the park, represented the reasonable value of legal services rendered under private-attorney-general statute; nonprofit successfully extended the hours it was allowed to canvass the park but failed to enjoin the owner's no contact list, and \$1,400 reduction was proper for attorney's unnecessary attendance at trial. M.S.A. §§ 8.31, 327C.13.

[3] Civil Rights ⇌ 1056

78k1056 Most Cited Cases

[3] Civil Rights ⇌ 1087

78k1087 Most Cited Cases

Trial court's restrictions which limited nonprofit organization's canvassing and leafleting activities in manufactured home park to daylight hours Monday through Saturday and which upheld park owner's no-contact list under statute regulating free expression in manufactured home parks did not violate the organization's First Amendment free speech rights; nothing in the language of the statute or its history indicated that the legislature intended to integrate First Amendment principles into the statute covering manufactured home communities. U.S.C.A. Const.Amend. 1; M.S.A. § 327C.13.

[3] Constitutional Law ⇌ 90.1(4)

92k90.1(4) Most Cited Cases

Trial court's restrictions which limited nonprofit organization's canvassing and leafleting activities in manufactured home park to daylight hours Monday through Saturday and which upheld park owner's no-contact list under statute regulating free expression in manufactured home parks did not

violate the organization's First Amendment free speech rights; nothing in the language of the statute or its history indicated that the legislature intended to integrate First Amendment principles into the statute covering manufactured home communities. U.S.C.A. Const.Amend. 1; M.S.A. § 327C.13.

[4] Civil Rights ⇔ 1056
78k1056 Most Cited Cases

[4] Civil Rights ⇔ 1087
78k1087 Most Cited Cases

Trial court's restrictions which limited nonprofit organization's canvassing and leafleting activities in manufactured home park to daylight hours Monday through Saturday and which upheld park owner's no-contact list under statute regulating free expression in manufactured home parks were reasonable; hours beyond nightfall would have been more likely to annoy residents, canvassing after dark would have interfered with owner's interest in providing a safe environment for its residents after dark, and no contact rule allowed people to be left alone if they so desired. M.S.A. § 327C.13.

Dakota County District Court, File No. C4-04-6504.

Kay Nord Hunt, Barry A. O'Neil, Valerie Sims, Lomnen, Nelson, Cole & Stageberg, P.A., Minneapolis, MN, for respondent.

John F. Bonner, III, Thomas F. DeVincke, Bonner & Borhart LLP, Minneapolis, MN, for appellant.

Considered and decided by KALITOWSKI, Presiding Judge; WILLIS, Judge; and STONEBURNER, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge.

*1 Appellant Uniprop Manufactured Housing Communities Income Fund challenges the district court's attorney-fee award, arguing that it was not justified because respondent did not prevail at trial. By notice of review, respondent All Parks Alliance for Change argues that the district court erroneously reduced its attorney-fee award and that the limits the district court placed on respondent's access to leaflet, canvass, and/or organize within appellant's manufactured park were unreasonable. We affirm.

DECISION

I.

[1] The district court awarded respondent \$31,232.60 in attorney fees pursuant to Minnesota's private-attorney-general statute, Minn.Stat. § 8.31, subd. 3a (2004). Appellant argues that the attorney-fee award was improper because respondent was not the prevailing party at trial. We disagree.

A district court is required to order costs for a prevailing party and has discretion to determine which party, if any, qualifies as a prevailing party. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn.1998). "In determining who qualifies as the prevailing party in an action, the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action." *Luna v. Zeeb*, 633 N.W.2d 540, 543 (Minn.App.2001) (quotation omitted). "The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn.1998).

Here, appellant owned and operated Ardmor Village, a manufactured home community in Lakeville, Minnesota. One of Ardmor Village's community covenants prohibited peddling or soliciting anywhere within the community. Respondent, a nonprofit organization that seeks to inform manufactured home park residents about their legal rights and protections, filed suit alleging that appellant's rule violated Minn.Stat. § 327C.13 (2002). Six months into the litigation, appellant adopted a new rule allowing noncommercial leafleting and canvassing on Ardmor Village premises between 11:00 a.m. and 6:00 p.m., Monday through Friday. The new rule prohibited leafleting or canvassing residences listed on a "no-contact" list. Respondent maintained that appellant's new rule violated Minn.Stat. § 327C.13 by setting unreasonable limits as to the time, place, and manner in which respondent could canvas, leaflet, and/or organize within Ardmor Village. Appellant argued that its limits were reasonable and that section 327C.13 was unconstitutional.

The district court rendered its decision primarily in respondent's favor, finding that appellant's limitations were unreasonable under Minn.Stat. § 327C.13 and that the statute was "not unconstitutional beyond a reasonable doubt." The

district court enjoined appellant from preventing or interfering with respondent's peaceful leafleting, canvassing, and/or organizing residents from 11:00 a.m. to 6:00 p.m. Monday through Saturday, and from 11:00 a.m. to 7:00 p.m. from May through August. The court also held that with certain limitations appellant could enforce the no-contact list provision. Of the \$45,248.91 that respondent claimed, the court found that respondent was entitled to attorney fees, costs and disbursements totaling \$31,232.60.

*2 Appellant argues that respondent did not prevail because the litigation was "entirely about" the no-contact list and appellant prevailed on that issue. We disagree. The record indicates that the parties litigated other issues at trial, including the constitutionality of Minn.Stat. § 327C.13 and the hours respondent was allowed access to Ardmor Village.

Appellant also claims that it offered respondent settlement proposals similar to, if not better than, the district court's eventual holding. But the district court explicitly declined to consider one of the settlement proposals because the parties failed to put it in writing and the attorneys could not agree that it even existed. Moreover, we need not determine whether appellant's final proposal was less favorable to respondent than the district court's order. The Minnesota Supreme Court has held that when a verdict is rendered in a party's favor, that party is the "prevailing party" even where the judgment entered was less than a rejected settlement offer. *Borchert*, 581 N.W.2d at 839. Because the district court's verdict was rendered in respondent's favor, we conclude that the district court did not abuse its discretion in finding respondent the prevailing party at trial.

II.

[2] Respondent challenges the amount of the attorney-fee award, arguing that the district court should not have reduced its requested amount. The reasonable value of counsel's work is a question of fact, and we must uphold the district court's findings on that issue unless they are clearly erroneous. *Amerman v. Lakeland Dev. Corp.*, 295 Minn. 536, 537, 203 N.W.2d 400, 400-01 (1973).

The attorney general is authorized to investigate and enforce violations of unfair and unlawful

business and commerce practices. Minn.Stat. § 8.31, subd. 1 (2004). Under Minnesota's private-attorney-general statute, an individual injured by a violation of this law may also "bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees...." Minn.Stat. § 8.31, subd. 3a (2004). Reasonable attorney fees are available under Minn.Stat. § 8.31, subd. 3a, to private citizens who can demonstrate that their cause of action benefits the public. *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn.2000). A violation of Minn.Stat. § 327C.13 is enforceable under the Minnesota private-attorney-general statute. Minn.Stat. §§ 8.31, subd. 1, 327C.15 (2004).

The Minnesota Supreme Court discussed the factors that should be considered when awarding attorney fees pursuant to statute:

Absent any statutory limitations, allowances should be made with due regard for all relevant circumstances, including the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client.

*3 *State by Head v. Paulson*, 290 Minn. 371, 373, 188 N.W.2d 424, 426 (1971).

Here, the district court awarded respondent attorney fees pursuant to Minn.Stat. § 8.31, subs. 1, 3a. The district court applied the *Paulson* factors, finding that "[f]or the most part, the hours worked appear to be reasonable." Calculating the specific amount of respondent's award, the court subtracted \$1,400 for an attorney's unnecessary attendance at trial and awarded respondent two-thirds of its claimed attorney fees. The court reasoned that respondent was not entitled to the full award because respondent had not entirely reached its desired outcome. Although respondent successfully extended the hours it was allowed to canvass Ardmor Village, respondent unsuccessfully sought to enjoin appellant's no-contact list. In reaching the final figure, the court considered the benefit respondent's statutory claim brought to "individuals and organizations such as [respondent]." Because of that benefit, the court rejected the notion of awarding respondent only one-third of its fees.

Considering the purpose of the statute under which respondent asserted its claim and the fact that it achieved "considerable goals," the court concluded that two-thirds of its fees was an appropriate award.

Respondent argues that because its claim benefited the public, the district court erred in reducing its attorney-fee award. We disagree. Minnesota courts must consider the benefit to the public when awarding attorney fees under the private-attorney-general statute. *Ly*, 615 N.W.2d at 314. And the district court considered the public benefit here, citing the public benefit as its rationale for awarding respondent two-thirds of its claimed fees rather than one-third. But Minnesota law does not state that a finding of public benefit necessarily mandates a full recovery of attorney fees. Where a claim under the private-attorney-general statute benefits the public, the Minnesota Supreme Court has held that a district court must award *reasonable* fees, not the claimant's fees in their entirety. See *Collins v. Minn. Sch. of Bus.*, 655 N.W.2d 320, 330 (Minn.2003); see also Minn.Stat. § 8.31, subd. 3a (stating that a person bringing a private-attorney-general action may recover reasonable attorney fees).

Respondent also argues that the district court erred by reducing its award by \$1,400, which represented an attorney's unnecessary attendance at trial. Respondent contends that the attorney in question "was actively involved in the case from start to finish" and conducted cross-examination of two witnesses at the trial. But we cannot say the district court's finding that one attorney could have sufficiently conducted the cross-examination is clearly erroneous. Because the district court did not clearly err by reducing respondent's award by \$1,400 and by awarding it two-thirds of its requested fees, we affirm the district court's attorney-fee award of \$31,232.60.

III.

*4 [3] Respondent also challenges the merits of the district court's order, arguing that the district court erred by restricting respondent's canvassing and leafletting activities to daylight hours Monday through Saturday and by upholding appellant's no-contact list. We disagree.

Minnesota law states:

No park owner shall prohibit or adopt any rule prohibiting residents or other persons from

peacefully organizing, assembling, canvassing, leafletting or otherwise exercising within the park their right of free expression for noncommercial purposes. A park owner may adopt and enforce rules that set reasonable limits as to time, place and manner.

Minn.Stat. § 327C.13 (2004). Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn.1996).

Respondent asserts that Minn.Stat. § 327C.13 incorporates First Amendment principles governing reasonable speech restrictions. Respondent claims that First Amendment jurisprudence therefore applies to determine the reasonableness of the community rules set by appellant here. We disagree.

"The first amendment applies only to state action and protected speech. Where a court is only enforcing the right of a private party, that is not clearly state action." *Smith v. Condux Int'l, Inc.*, 466 N.W.2d 22, 26 (Minn.App.1991) (citing *Cherne Indus. v. Grounds & Assocs.*, 278 N.W.2d 81, 94 n. 10 (Minn.1979)) (other citations omitted). Here, appellant is a private landowner, not a governmental actor. And we reject the argument that Minn.Stat. § 327C.13 converts manufactured home parks into governmental entities. Nothing in the language of the statute or its history indicates that the legislature intended to integrate First Amendment principles into this statute covering manufactured home communities. And this court "cannot supply that which the legislature purposely omits or inadvertently overlooks." *Wallace v. Comm'r of Taxation*, 289 Minn. 220, 230, 184 N.W.2d 588, 594 (1971). Because there is no state action here, we conclude that the district court's order did not violate respondent's First Amendment rights.

[4] The issue here is not constitutional but statutory. Minnesota law states that the limits park owners place on noncommercial organizing, assembling, canvassing, and leafletting must be "reasonable." Minn.Stat. § 327C.13. The district court upheld appellant's no-contact list but ordered appellant to allow respondent access on Saturdays and for an additional hour in the evenings from May through August.

The district court expressly declined to extend respondent's permissible canvassing hours beyond nightfall because later visits would be more likely to annoy residents and because canvassing after dark could interfere with appellant's interest in monitoring the premises and providing a safe environment for its residents after dark. The court also declined to extend respondent's access to Sundays, reasoning that the other permissible hours should provide respondent sufficient opportunity to contact most residents. The district court held that the no-contact provision of appellant's new rule was reasonable because "[p]eople should have the right to be left alone."

*5 Respondent offers alternative means by which appellant could protect its residents' rights, but Minn.Stat. § 327C.13 does not require that limitations on noncommercial speech in manufactured home parks be the least restrictive limitations available. Instead, Minn.Stat. § 327C.13 requires reasonableness. We conclude that the limits the district court imposed on respondent's access to Ardmor Village were reasonable under Minn.Stat. § 327C.13.

Affirmed.

Not Reported in N.W.2d, 2006 WL 618932
(Minn.App.)

END OF DOCUMENT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Court File No. C4-04-6504

Type of Case: Other/Civil

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT**

Uniprop Manufactured Housing Communities
Income Fund, d/b/a Ardmore Village,

Defendant.

The above captioned matter came on before the Honorable Robert R. King, Jr. as a civil court trial on November 17, 2004. Barry O'Neil, Attorney at Law, appeared on behalf of Plaintiff. Thomas F. DeVincke, Attorney at Law, appeared on behalf of Defendant.

The Court hereby makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Plaintiff All Parks Alliance for Change ("APAC"), is a statewide, Minnesota non-profit organization located at 2395 West University Avenue, Suite 302, St. Paul, Minnesota, 55114 which seeks to educate manufactured home park residents about their rights and protections under State law. APAC's bylaws provide that its primary purpose is educational. (Tr. Exhibit 1). APAC also serves in an advocacy capacity for manufactured home park residents by assisting them in having a stronger voice in their communities through

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VAN A. BROSTROM, Court Administrator

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grass-roots organizing and leadership development. (*Tr. Transcript at 14-15, Ned Moore Testimony; Tr. Ex. 1*).

2. Defendant Uniprop Manufactured Housing Communities Income Fund, ("Uniprop") is a Michigan limited partnership doing business in Minnesota as the nameholder, owner and operator of Ardmor Village, a manufactured housing park located at 20990 Cedar Avenue South, City of Lakeville, in Dakota County, Minnesota.

3. Ardmor Village consists of about 339 rental lots, of which approximately 280 lots are currently occupied. (*Tr. Transcript, Mary McGaffey Testimony at 52*).

4. APAC handles a statewide resident hotline for complaints and questions, and provides advice, suggestions, and referrals to help manufactured home park residents solve their park-related problems. (*Tr. Transcript, Ned Moore Testimony at 18-19*). It also conducts outreach workshops for residents dealing with issues such as eviction, park closing ordinances and forming resident associations. (*Id. at 19*). APAC informs residents of the workshops through flyering and door-to-door communication. (*Tr. Transcript, Ned Moore Testimony at 19*). Because resident associations require signatures from 51% of residents in a given community, door-to-door communication during times when residents are most likely to be home is important. (*Tr. Transcript, Ned Moore Testimony at 20*). During petition drives, APAC may elicit the help of employees, students, active members, and volunteers to canvass the community. (*Tr. Transcript, Ned Moore Testimony at 21*).

5. APAC's membership is made up of manufactured home park residents. (*Tr. Exhibit 1*). APAC membership fees of \$10 per year are waived for any resident without the ability to pay. (*Tr. Transcript, Ned Moore Testimony at 16-17; Trial Exhibit 1*).

6. In April 2003, Ardmor manager Douglas McGaffey stopped APAC employees from leafleting on the premises. The Lakeville police were summoned and APAC was asked to leave the premises without completing the leafleting. APAC complied. (*Tr. Transcript, Ned Moore Testimony at 21-23*).

7. Again in June 2003, Ardmor manager Douglas McGaffey stopped APAC employees from leafleting on the premises. Mr. McGaffey gave APAC employees a map of Ardmor Village so that APAC could distribute its leaflets by direct mail. (*Tr. Transcript, Ned Moore Testimony at 23-24; Tr. Exhibit 3*). The map did not indicate which home sites were vacant or the names of the residents at each home site. (*Tr. Transcript, Ned Moore Testimony at 25; Tr. Exhibit 3*). APAC employees addressed the mailings to "homeowner," and received at least 70 of the mailings returned undeliverable. (*Tr. Transcript, Ned Moore Testimony at 26*).

8. APAC incurred \$590.16 in additional expenses to deliver the information to Ardmor residents directly by U.S. mail. (*Tr. Transcript, Ned Moore Testimony at 26-27; Tr. Exhibit 2*).

9. Leafleting door-to-door in the Ardmor community resulted in greater attendance at APAC-sponsored meetings and increased memberships from Ardmor Village residents. (*Tr. Transcript, Ned Moore Testimony at 26, 72*).

10. This court issued a temporary injunction on March 31, 2004. The order restrained and enjoined the Defendant from preventing, prohibiting, or otherwise interfering with Plaintiff, its employees or volunteers' peaceful leafleting, canvassing, and/or organizing

residents at Ardmore Village Manufactured Home Community during the hours of 9:00 a.m. until 8:00 p.m. Monday through Saturday. (*March 31, 2004 Order*).

11. Defendant adopted and notified Ardmore residents of a new rule on August 6, 2004. (*Tr. Transcript, Mary McGaffey Testimony at 54; Tr. Exhibits 5 and 6*). The new rule was adopted in response to APAC's claims in this litigation. (*Tr. Transcript, Mary McGaffey Testimony at 54*).

12. The new rule prohibits all forms of commercial solicitation at Ardmore. (*Tr. Exhibit 5*). The new rule restricts noncommercial leafleting and canvassing on the Ardmore premises to 11a.m. to 6 p.m. Monday through Friday. (*Tr. Exhibit 5*). No leafleting or canvassing is permitted during evening or weekend hours. (*Trial Exhibit 5*). The new rule also requires APAC and all other persons engaged in noncommercial speech to visit the Ardmore management office before canvassing to obtain a "no-contact list" created and maintained by Ardmore. The new "No-Contact" list allows any Ardmore Village resident who does not want to receive canvassers, leaflets or door-to-door solicitations to sign up for inclusion on the list. (*Tr. Transcript, Mary McGaffey Testimony at 61-63; Trial Exhibits 5, 8*).

13. The new rule, on its face, permits only "leafleting and canvassing." (*Tr. Exhibit 5*). Ardmore management is unsure if the new rule prohibits other activities prescribed by Minn. Stat. § 327C.13 such as organizing, assembling, or otherwise exercising within the park. (*Tr. Transcript, Mary McGaffey Testimony at 65; Douglas McGaffey Testimony at 69; Tr. Exhibit 5*). APAC or other nonprofit groups are not permitted to organize a meeting or assemble at the Ardmore community center unless sponsored by an Ardmore resident. (*Tr. Transcript, Douglas McGaffey Testimony at 70*).

14. Ardmor Village contends that its new rule represents a reasonable compromise and balancing of the competing interests of its residents right to quiet enjoyment and APAC's statutory right to canvas, leaflet and solicit.

15. There is no complaint that APAC's representatives ever behaved in a disruptive or disorderly manner, or damaged any property in the park. (*Tr. Transcript, Mary McGaffey Testimony at 57*).

16. Since the new rule was established in early August 2004 and delivered door-to-door to Ardmor residents by Ardmor maintenance staff, 24 of the approximately 280 occupied home sites have signed up for the no-contact list. (*Tr. Transcript, Mary McGaffey Testimony at 58, 76; Tr. Exhibit 6*). The no-contact list makes no distinction between commercial and noncommercial communications. (*Tr. Transcript, Mary McGaffey Testimony at 62; Tr. Exhibit 6*).

17. The new rule unreasonably curtails APAC's outreach efforts and presents an unreasonable impediment to forming a resident association or responding to any kind of crisis situation at Ardmor. (*Tr. Transcript, Ned Moore Testimony at 35-36*). The new rule makes it difficult for APAC to find volunteers to help with leafleting, as only one known volunteer at Ardmor is available during weekdays. (*Tr. Transcript, Ned Moore Testimony at 35*). In the past, a resident association at Ardmor was an "enormous benefit to the community." (*Tr. Transcript, Katherine Dennen Testimony at 84*). Petition drive efforts would be seriously impacted without the ability to reach residents face-to-face during evening and/or weekend hours. (*Tr. Transcript, Ned Moore Testimony at 36*).

18. Some of the residents of Ardmor, including at least two on the No-Contact list, have a desire to be left alone, and do not want any uninvited guests, including APAC, to come to their home sites. (*Tr. Transcript, Katherine Dennen Testimony at 79-81; Roger Moran Testimony at 85-86*).

19. No evidence was presented to indicate that any resident on the No-Contact list was improperly on it or was coerced into signing it.

20. APAC usually leaflets the community during the early afternoon hours. If they are going to have an evening workshop, they will sometimes go door knocking at homes where people are around to remind them about the meeting. This can occur just prior to the meeting. APAC usually holds its community meetings around 6:30 p.m. to 7:00 p.m. (*Tr. Transcript, Ned Moore Testimony at 33; 44*).

21. APAC is able to canvas all of the home sites in the Ardmore Village community in about four hours.

22. APAC is able to utilize the Ardmor Village community room to hold meetings so long as an Ardmor Village resident reserves the community room for the event.

23. There are presently APAC members residing in the Ardmor Village community.

24. APAC has never asked to reserve the Ardmor Village community room in order to hold a meeting with Ardmor Village residents.

Based on the foregoing Findings, the Court makes the following:

CONCLUSIONS OF LAW

1. APAC has a right of free expression within Ardmor Village for noncommercial

purposes pursuant to Minn. Stat. § 327C.13. Such expression includes peacefully organizing, assembling, canvassing, leafleting or otherwise exercising within the park. Minn. Stat. § 327C.13.

2. Ardmor violated Minn. Stat. § 327C.13 by prohibiting and adopting a rule prohibiting APAC's employees from peacefully leafleting and canvassing at Ardmor Village when Ardmor manager Douglas McGaffey prohibited said activity in April 2003 and again in June 2003.

3. The Court finds that Ardmor's interest in promoting the residents' "quiet and peaceful use of the community" is compelling. However, the new rule is not narrowly drawn to achieve that end. The new rule adopted on August 2, 2004 violates Minn. Stat. § 327C.13. The Court finds that the new rule is not reasonable, in that it would restrict APAC from being able to directly contact residents during the times in which residents are most likely to be home, i.e. on Saturdays during the day.

4. APAC has been injured by Ardmor's violation of Minn. Stat. §327C.13 in the amount of \$590.16 and is entitled to an injunction, costs, investigation fees and reasonable attorney's fees pursuant to Minn. Stat. §327C.15 and §8.31, subs. 1 and 3(a).

5. Minn. Stat. §327C.13 is not unconstitutional beyond a reasonable doubt.

Based on the foregoing Conclusions, the Court makes the following:

ORDER:

1. Defendant Uniprop Manufactured Housing Communities Income Fund, its agents, employees or any other persons acting in concert are hereby permanently enjoined from preventing, prohibiting or interfering with Plaintiff, Plaintiff's employees or volunteers' peaceful leafleting, canvassing, and/or organizing residents at Ardmor Village

Manufactured Home Community during the hours of 11:00 a.m. until 6:00 p.m.,
Monday through Saturday.

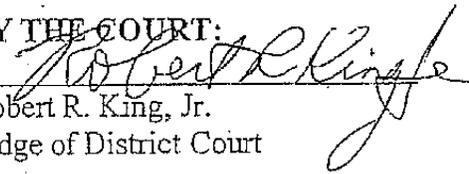
2. Defendant Unipro Manufacturing Communities Income Fund, its agents, employees or any other persons acting in concert are not enjoined from enforcing the new "no contact list" portion of the new rule enacted on August 6, 2004. Plaintiff and its representatives and agents shall respect the list and make no attempt to contact the persons or residences on the list, absent further order of the Court
3. On the first day of every other month, starting in February, 2005, the Defendant shall provide to a party designated by the Plaintiff the current "no-contact" list. The Defendant shall also provide at that time a current count of the number of occupied units in the park. If, at any time, the total number of resident addresses on the "no-contact" list equals or exceeds 25 percent of the total occupied units in the park, the Plaintiffs shall have a right to petition the court for a hearing on the issue of whether or not residents are being improperly coerced or persuaded into signing the no-contact list. Should the Court then find that residents are being improperly coerced or persuaded into signing the no-contact list, the Court will then consider enjoining the use of said list.
4. Plaintiff shall have and recover from Defendant its actual damages of \$590.16, plus interest thereon.
5. Plaintiff shall have and recover from Defendant its reasonable costs and disbursements, including attorney fees, in accord with Minn. Stat. § 327C.15 and Minn. Stat. § 8.31, subd. 3a.

6. The attached Memorandum is made a part hereof.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 17, 2004

BY THE COURT:



Robert R. King, Jr.
Judge of District Court

MEMORANDUM

1. **Constitutionality of the Statute-** The Defendant has challenged the constitutionality of Minn. Stat. §327C.13. In order to prevail in this argument, the Defendant would have to prove beyond a reasonable doubt that the statute is unconstitutional, as Minnesota statutes are presumed constitutional. *In Re Haggerty*, 448 N.W.2d 363 (Minn. 1989). The Court believes that the issue is not entirely clear. However, the Court cannot say that the statute is unconstitutional beyond a reasonable doubt.

Decisions from the United States Supreme Court provide guidance, but are not conclusive. In *Marsh v Alabama*, 326 U.S. 501 (1946), the Court held that a state could not prosecute a person for distributing religious literature on the premises of a company-owned town. Chickasaw, the town in question, consisted of residential buildings, streets, a system of sewers, a sewage disposal plant and a 'business block' on which businesses were located. In other words, it was like any other American town. The company that owned the town had posted notices indicating that the town was private property, and that no solicitation of any kind would be permitted without written permission. The Appellant, a Jehovah's Witness, attempted to distribute religious literature on a sidewalk outside of the post office. She was arrested for trespassing. The appellant argued that her first amendment right to freedom of press and religion was abridged. She was convicted in state court.

Justice Black summarized the question before the Court, and analyzed it thusly:

Can those people who live in or come to Chickasaw be denied freedom of press and religion simply because a single company has legal title to all the town? For it is the state's contention that the mere fact that all the property interests in the town are held by a single company is enough to give that company power, enforceable by a state statute, to abridge these freedoms.

Many people in the United States live in company-owned towns. These people, just as residents of municipalities, are free citizens of their State and country. Just as all other citizens they must make decisions which affect the welfare of community and nation. **To act as good citizens they must be informed.** In order to enable them to be properly informed their information must be uncensored. There is no more reason for depriving these people of the liberties guaranteed by the First and Fourteenth Amendments than there is for curtailing these freedoms with respect to any other citizen.

When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. As we have stated before, the right to exercise the liberties safeguarded by the First Amendment 'lies at the foundation of free government by free men' and we must in all cases 'weigh the circumstances and appraise... the reasons... in support of the regulation of (those) rights.' *Schneider v State*, 308 U.S. 147, 161, 60 S.Ct. 146,

151. In our view the circumstances that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others that the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a State statute. Insofar as the State has attempted to impose criminal punishment on appellant for undertaking to distribute religious literature in a company town, its actions cannot stand. The case is reversed....

(emphasis added)

The next significant case to deal with the conflict of private property rights versus First Amendment rights was *Food Employees v. Logan Valley Plaza*, 391 U.S. 308 (1968). In that case, Weis Markets owned and operated a supermarket in a large shopping center complex owned by Logan Valley Plaza. Members of the petitioner union picketed Weis' store, confining the picketing almost entirely to the parcel pickup zone and the portion of the parking area adjacent thereto. A Pennsylvania trial court enjoined "picketing and trespassing upon . . . the [Weis] storeroom, porch and parcel pick-up area . . . [and] the [Logan] parking area," thus preventing picketing inside the shopping center. The injunction was issued in order to protect Weis and Logan's property rights and because the picketing was unlawfully aimed at coercing Weis to compel its employees to join a union.

The Supreme Court reversed the Pennsylvania court. The Court held that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or the manner of the picketing, protected by the First Amendment. *Id.* 313-315. The Court also held that although there may be regulation of the manner in which handbilling, or picketing, is carried out, that does not mean that either can be barred under all circumstances on publicly owned property simply by recourse to traditional concepts of property law concerning the incidents of ownership of real property. *Id.* 315-316. Most significantly, the Court held that since the shopping center serves as the community business block "and is freely accessible and open to the people in the area and those passing through," the State may not delegate the power, through the use of trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put. *Id.* 316-325.

The Court further stated:

All we decide here is that because the shopping center serves as the community business block" and is freely accessible and open to the people in the area and those passing through," *Marsh v. Alabama*, 326 at 508, the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put.

Here, the union was picketing the grocery store's failure to have union employees. The place being picketed was the grocery store. This apparently weighed heavily into the court's

decision. The result may well have been quite different if the picketers had been picketing or leafleting about something totally unrelated to the grocery store. This in fact was one of the distinctions made in the *Lloyd Corp.* case, *infra*.

The Court also stated:

Therefore, as to the sufficiency of respondents' ownership of the Logan Valley Mall premises as the sole support of the injunction issued against petitioners, we simply repeat what was said in *Marsh v. Alabama*, 326 U.S. at 506, "Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." Logan Valley Mall is the functional equivalent of a "business block" and for First Amendment purposes must be treated in substantially the same manner.

(emphasis added)

The next significant case to analyze similar issues was *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972). In that case the Respondents tried to distribute handbills in the interior mall area of a large privately owned shopping center. The handbills in question dealt with resistance to the Vietnam War and the draft. Security officers ordered the Respondents to leave, and they applied for an injunction to allow them to continue to distribute the handbills. The trial court found that the shopping center, like the shopping center in *Logan*, *supra*, was "open to the general public" and thus was the "functional equivalent of a public business district." The trial court concluded that *Lloyd Corp.*'s rule against handbilling violated First Amendment rights.

The Supreme Court distinguished *Logan Valley* from the facts and issues in *Lloyd Corp.* It pointed out that in *Logan Valley* the picketing was directed at only one store in the shopping center "and the message sought to be conveyed to the public concerned the manner in which that particular market was being operated." They also pointed out that the layout of the property made it difficult "to communicate [with] patrons of [the store]" and "to limit [the] effect [of the picketing] to Weis only." The Court found that those circumstances were not present in the *Lloyd Corp.* case, and thus came to a different conclusion. In *Lloyd Corp.*, the handbilling had "no relation to any purpose for which the [shopping] center was built and being used." The Court pointed out that the message that Respondents sought to convey (about the war and the draft) was directed to all members of the public, not just patrons of the shopping center or any of its operations. The handbills could have been distributed on any public street or any other public location. The Court noted that the invitation to the public to use the Center was not open-ended. It could not be used for any and all purposes, however incompatible with the interests of the stores and the shoppers.

The Court also pointed out, and this is important for the purpose of the case at hand, that in *Logan Valley* the union pickets would have been deprived of all reasonable opportunity to get their message to customers of the grocery store had they been denied access to the shopping center. In *Lloyd Corp.* the circumstances were considerably different.

On the other hand, the Court also stated the following:

Although accommodations between the values protected by [the First, Fifth, and Fourteenth Amendments] are sometimes necessary, and the courts properly have shown a special solicitude for the guarantees of the First Amendment, this Court has never held that a trespasser or an uninvited guest may exercise general rights of free speech on property privately owned and used nondiscriminately for private purposes only. Even where public property is involved, the Court has recognized that it is not necessarily available for speaking, picketing, or other communicative activities. (citations omitted)

The Court distinguished its holding in this case from that in *Marsh v Alabama* by noting the extent to which the company town in *Marsh* was so similar to a municipality. It then found that the shopping center in this case was not similar to a municipality. The Court concluded by saying:

We do say that the Fifth and Fourteenth Amendment rights of private property owners, as well as the First Amendment rights of all citizens, must be respected and protected. The Framers of the Constitution certainly did not think these fundamental rights of a free society are incompatible with each other. There may be situations where accommodations between them, and the drawing of lines to assure due protection of both, are not easy. But on the facts presented in this case, the answer is clear.

We hold that there has been no such dedication of Lloyd's privately owned and operated shopping center to public use as to entitle respondents to exercise therein the asserted First Amendment rights. Accordingly, we reverse the judgment and remand the case to the Court of Appeals with directions to vacate the injunction.

The holding in *Logan Valley* did not last much longer. In *Hudgens v. N.L.R.B.*, 96 S.Ct. 1029 (1976) the Supreme Court expressly acknowledged that *Lloyd Corp.* had essentially overruled the holding in *Logan Valley*, and found that there was no constitutional right for union picketers to picket on privately owned shopping center property, regardless of the nature of the information being disseminated.

From the foregoing discussion, it can be said that in the 1940's through the 1960's the Court tended to broaden the expanse of First Amendment rights over the rights of private property owners. That moderated in the 1970's, and appears to have continued in that vein since then.

Ardmor Village does share some similarities to the company town described in *Marsh v Alabama*. Both locations contained people who lived on land privately owned by a third party. Both locations had local rules that governed conduct within the location. Both locations had streets that wound through the locations. In Ardmore Village the residents actually own the homes that sit on the land. However, there are a number of dissimilarities as well. In the company town, there was a business district. That was the location of the disputed handbilling. There apparently are no separate business entities or districts in Ardmore Village. It is strictly residential. There also are not the types of services, such as police and fire protection, in Ardmore Village that were found in the company town. Police and fire services are instead provided by

the City of Lakeville. So it can be safely said that Ardmor Village less resembles a municipality than did the company town of *Marsh v Alabama*. However, Ardmor Village more resembles a company town in some ways than did the shopping centers in the *Logan Valley, Lloyd Corp.*, and *Hudgen* cases.

Despite the foregoing discussions, the issues in this case are somewhat different than those discussed above. Here, the Plaintiff's claim of right to go on to the Defendant's property is based not so much on a First Amendment right claim as it is on a statutory claim. Specifically, Minn. Stat. §327C.13 states:

327C.13. Freedom of expression

No park owner shall prohibit or adopt any rule prohibiting residents or other persons from peacefully organizing, assembling, canvassing, leafleting or otherwise exercising within the park their right of free expression for noncommercial purposes. A park owner may adopt and enforce rules that set reasonable limits as to time, place and manner.

The Plaintiff argues that this statute clearly applies in this case, and gives the Plaintiff the right to do what it proposes to do. The Defendant argues that the statute is unconstitutional. Interestingly, neither party supplied the Court with any cases that are on point on this issue. This could very well be because there aren't any. The Court, however, believes that the case of *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980) is quite helpful in analyzing this issue. In *Pruneyard*, the Respondents had been soliciting signatures for petitions in opposition to a United Nations resolution in the Appellant's shopping center. The shopping center had a rule that prohibited anyone from engaging in any publicly expressive activity that was not directly related to the center's commercial purposes. The Respondents were forced to leave, and brought an injunction action against the Center. The California Supreme Court held that the California Constitution protected speech and petitioning, reasonably exercised, in shopping centers even when the center is privately owned, and that such result does not infringe Appellant's property rights protected by the Federal Constitution.

The United States Supreme Court affirmed the California Supreme Court in a decision written by Justice Rehnquist. The question before the Court was whether state constitutional provisions, which permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited, violate the shopping center owner's property rights under the Fifth and Fourteenth Amendments, or his free speech rights under the First or Fourteenth Amendments. It should first be noted that the Supreme Court treated the state constitutional provision as a "statute" for purposes of analysis. Thus, it is appropriate to consider the Minnesota statute in question under the analysis provided in *Pruneyard*. The Supreme Court stated:

Our reasoning in [*Lloyd v Tanner, supra*] however, does not ex proprio vigore limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution. *Cooper v California*, 386 U.S. 58, 62 (1967). See also 407 U.S. 569-570. In *Lloyd, supra*, there was no state constitutional or statutory provision that had been construed to create rights to

the use of private property by strangers, comparable to those found to exist by the California Supreme Court here. It is, of course, well established that a State in the exercise of its police power may adopt reasonable restrictions on private property so long as the restrictions do not amount to a taking without just compensation or contravene any other federal constitutional provision. See, e.g. *Euclid v Ambler Realty Co.*, 272 U.S. 365 (1926); *Young v American Mini Theaters, Inc.*, 427 U.S. 50 (1976)....

(emphasis added)

Thus, it appears that the State would have the right to pass a law or a constitutional amendment that would allow persons to engage in acts consistent with freedom of expression on privately owned lands, so long as the implementation of the law or the individual acts did not amount to a "taking" in violation of the Fifth and Fourteenth Amendments. In this case, Ardmor has not presented any evidence that would even remotely indicate a "taking." Ardmor has not shown that the land itself, or Ardmor's interest in it, will in any way be affected by the actions proposed by the Plaintiffs. Because the Court is finding Ardmor's "no-contact" rule to be reasonable, any concern that residents might have about unwanted solicitation is being removed. Thus, Ardmor cannot argue that they might lose potential residents because of the permitted solicitations. Likewise, the amount of likely solicitation and intrusion onto the land will be so minimal that it could not possibly be said to in any way reduce the value of the land or Ardmor's interest in it. The only conceivable impact to Ardmor is that the residents may decide to form an association, and may resist some of Ardmor's rules. That, however, would be consistent with the whole purpose of the law (to inform manufactured home park residents about their rights) and should not reduce the value of the land. Thus, no proof of a "taking" has been provided.

In conclusion, while there is certainly a legitimate question as to the constitutionality of the subject statute, the Court is not convinced that it is unconstitutional beyond a reasonable doubt. Thus, the Court has applied the statute to this case.

2. Reasonableness of Defendant's Rules-

A. Time- The Plaintiff asserts that Ardmor's "new" rule is unreasonable, while Ardmor claims that it is reasonable. If the rule is reasonable it passes muster under the statute, which allows park owners to adopt and enforce rules that set "reasonable limits as to time, place and manner." The Court concludes that the rule is not reasonable. In deciding the reasonableness of the rule, the Court must consider the reason for the statute. The Court is able to do this without referencing the legislative history that was proffered by the Plaintiff and objected to by the Defendant. In so doing, the Court has considered all of Minnesota Statutes Chapter 327C. That Chapter is devoted to spelling out rules regarding manufactured home park lot rentals. A number of the statutes contained therein expand the rights of lot renters. Thus, it is apparent that the legislature recognized the inherent imbalance of power between lot renters and park owners, and attempted to protect, to some extent, the renters. §327C.13 is clearly for the benefit of park residents and "other persons." Apparently, the legislature must have believed that park residents would benefit from the free exchange of information that they might have otherwise been denied had rules totally restricting canvassing, etc. been enforceable.

Recognizing the purpose of the statute, i.e. the provision of information to park residents, the Court concludes that the current rule unreasonably interferes with the opportunity of the Plaintiffs to give, and the residents to receive, useful information regarding the residents' rights. The chief fault in the current rule is the time restrictions. Testimony revealed that a good number of residents likely work until at least 5:00 p.m., Monday through Friday. This is not surprising, as the same could probably be said of most community members. The new rule requires canvassing to stop by 6:00 p.m. It is quite likely, then, that a good number of residents would not be home before the Plaintiffs were required to stop canvassing. The Plaintiffs claim, and the Court believes, that face-to-face contact is important in getting out the information the Plaintiffs wish to provide. Thus the chief purpose of the statute, the dissemination of ideas, is substantially defeated if the canvassers are unable to actually talk with the residents. The rule must therefore be changed to accommodate the need for face-to-face contact. This can be done by allowing canvassing, etc. to occur on Saturdays between the hours of 11:00 a.m. and 6:00 p.m. Most people who work during the weekday are likely to be home at some point between those hours on Saturdays. The other option would be for the Court to order an expansion of the time on weekdays to, say, 8:00 p.m. The problem with that is that 8:00 p.m. is well after nightfall for a good part of the year in Minnesota. It would conceivably be more difficult for the management of Ardmor Village to monitor the comings and goings of "strangers" and assure a safe environment for residents after dark. It also seems more likely that residents will be more annoyed by late evening visitors than they would be by visitors on Saturdays. The Court sees no need to expand the time, as requested by Plaintiffs, to Sundays, as most of the residents should be able to be contacted during the hours the Court is permitting. The Statute requires reasonableness, not perfection.

B. "No contact"- The Court finds that the "no-contact" provision of the "new rule" is quite reasonable. People should have the right to be left alone. The Plaintiff's chief arguments against the rule are that Ardmor may coerce people into joining the list, and that the National No-Call list, which could be said to be similar in nature to the "no-contact" list, specifically exempts non-profit organizations from its application.

The Plaintiff's first concern is dealt with by ¶3 of this Court's Order. As things currently stand, less than 10 percent of the occupied unit residents (24 out of about 280) have signed the "no-contact" list. This relatively low number is itself inconsistent with any claim that residents are being improperly persuaded or coerced into signing the list. However, a large increase in that percentage may raise at least some concern that something improper is occurring. For that reason the Court has provided that Ardmor shall not attempt to persuade or coerce anyone into signing the list. As a check on the matter, the Court has provided that if the total number of occupied units that sign up for the "no-contact" list equals or exceeds 25 percent of the total number of occupied units, the Plaintiff would have a right to bring the matter before the Court to determine if something improper is occurring. With this safeguard in place, the Plaintiffs should be assured that the "no-contact" rule is being fairly implemented. The burden on the Court of administering this rule should be minimal as it has placed the burden on the Defendant to provide the numbers to the Plaintiff, and on the Plaintiff to monitor those numbers and take appropriate legal action.

The Plaintiff's second concern, regarding the National No-Call list, is irrelevant to this case. That law is a federal law, and no doubt included the exemption for non-profits due to

lobbying efforts of those non-profits upon the Congress. It does not appear that non-profits have some constitutional right to call people who have specifically indicated that they do not want to be called. Likewise, the Plaintiff does not have the right to come onto the property of residents who have specifically stated that they do not want to have anyone solicit them.

3. Attorney's fees- The Court has ordered the awarding of reasonable attorney's fees pursuant to statute. The Court will await submissions regarding the fees, as required by rule. The Court will note that it seems clear that the Plaintiffs will be entitled to attorney's fees it incurred up to the time of the granting of the initial Temporary Injunction in this case. Whether or not the Court should grant all further reasonable attorney's fees incurred by the Plaintiff is not so certain. The Court will thus be requesting that when the Plaintiff makes its submission it also sends with it an argument as to the appropriateness of the fees. The Defendant, of course, would have the opportunity to respond. One of the issues could be the relative demands of the parties during the litigation as to the "new rule" and the Defendant's willingness to change it. In other words, if the Defendant was willing to change its new rule in a manner that is consistent with this Court's ruling, but the Plaintiffs were unwilling to agree to such a change, wanting more, then there may be an issue regarding whether Plaintiff's later incurred attorneys fees should be paid by the Defendant. That debate, of course, might raise the issue of the admissibility of evidence involving negotiations. The Court will not attempt to deal with those issues now, but raises them in the hope that the parties will address them in their submissions.

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT

Court File No. C4-04-6504

Type of Case: Other/Civil

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

vs.

ORDER

Unipro Manufacturing Housing Communities
Income Fund, d/b/a Ardmor Village,

Defendant.

The above captioned matter came on before the Honorable Robert R. King, Jr. on February 14, 2005 for hearing on the Plaintiff's Motion for Amended Findings of Fact or, in the alternative, a new trial. Barry O'Neil, Attorney at Law, appeared on behalf of Plaintiff. Thomas F. DeVincke, Attorney at Law, appeared on behalf of Defendant.

The Court hereby makes the following:

ORDER:

1. Plaintiff's Motion for Amended Findings of Fact or, in the alternative, a new trial, is **GRANTED** as follows:

¶1 of the Court's Order is amended to state:

1. Defendant Unipro Manufacturing Housing Communities Income Fund, its agents, employees or any other persons acting in concert are hereby permanently enjoined from preventing, prohibiting or interfering with Plaintiff, Plaintiff's employees or volunteers' peaceful leafleting, canvassing, and/or organizing residents at Ardmor

FILED DAKOTA COUNTY
VAN A. BROSTROM, Court Administrator

MAR 01 2005

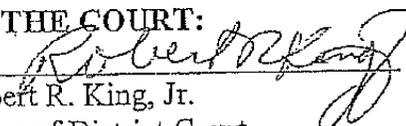
BY  DEPUTY

Village Manufactured Home Community during the hours of 11:00 a.m. until 6:00 p.m., Monday through Saturday, *from September 1 to April 30 of each calendar year.* For the time period of *May 1 to August 30 of each year, the injunction shall be from 11:00 a.m. until 7:00 p.m.*

2. The attached Memorandum is made a part hereof.
3. The Court shall issue Amended Findings, etc. concurrently with this Order.

Dated: March 1, 2005

BY THE COURT:



Robert R. King, Jr.
Judge of District Court

MEMORANDUM

As the Court indicated in its original Order, it seems reasonable to restrict outside canvassing and leafleting to daylight hours. The Court's modification of hours recognizes the fact that dusk comes later in the late spring and summer than it does in the fall and winter. Therefore, it would be reasonable to allow such activity later in those time periods than the Court initially allowed. Therefore, the Court has expanded the hours to 7:00 p.m. in the appropriate months.

The Court has considered the Plaintiff's other arguments. The Court concludes that there is a range of "reasonable" restrictions that could be set under the statute. What APAC proposes is not necessarily unreasonable. However, the provisions ordered by the Court, including the no-contact list, is reasonable. Therefore, the Court sees no reason to amend those provisions, other than in the foregoing manner.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Court File No. C4-04-6504

Type of Case: Other/Civil

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

vs.

FINDINGS AND ORDER
REGARDING FEES AND COSTS
AND JUDGMENT

Uniprop Manufactured Housing Communities
Income Fund, d/b/a Ardmore Village,

Defendant.

The above captioned matter came on before the Honorable Robert R. King, Jr. on February 14, 2005 for hearing on the Plaintiff's Motion for attorneys' fees and costs. Barry O'Neil, Attorney at Law, appeared on behalf of Plaintiff. Thomas F. DeVincke, Attorney at Law, appeared on behalf of Defendant.

The Court hereby makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Court incorporates the attached Memorandum, which is made a part hereof, as its Findings and Conclusions of Law.

Based on the foregoing Findings and Conclusions of Law, the Court makes the following:

ORDER:

1. The Plaintiff is entitled to a Judgment against the Defendant in the amount of \$29,232.60 (\$45,248.91 -\$1,400 x 2/3) for attorneys' fees, costs and disbursements up to and

FILED DAKOTA COUNTY
YANA, BROSTROM, Court Administrator

MAR 07 2005

BY DKM
DEPUTY

STATE OF MINNESOTA, COUNTY OF DAKOTA
Certified to be a true and correct copy of the original
on file and of record in my office this 21
day of May, 2005

YANA, BROSTROM, COURT ADMINISTRATOR

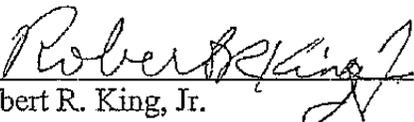
BY Deborah M. Havelton

including the trial of this matter, and \$2,000.00 for attorneys' fees, costs and disbursements for post-trial motions, for a total of \$31,232.60.

LET JUDGMENT BE ENTERED ACCORDINGLY.

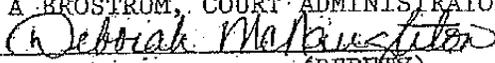
Dated: March 4, 2005

BY THE COURT:


Robert R. King, Jr.
Judge of District Court

JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER TOGETHER WITH THE AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT CONSTITUTES THE JUDGMENT OF THIS COURT.

VAN A BROSTROM, COURT ADMINISTRATOR
BY: 
(DEPUTY)

DATED: March 7, 2005

PRE-JDG INT FROM 12-17-04 TO 3-7-05 IN THE AMT OF \$273.68 INSERTED IN THE JDG.

MEMORANDUM

In *State v Paulson*, 188 N.W.2d 424 (Minn. 1971) the Supreme Court stated that, when attorneys' fees are awarded by statute, the Court of fact should take into consideration the following factors when setting the fees:

The time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation and ability of counsel; and the fee arrangement existing between counsel and the client.
(at p. 426)

The Court will therefore consider these issues to the extent it is able to, based on the submissions of counsel.

1. **Time and labor involved-** The Plaintiff's attorneys have submitted affidavits and billing records indicating that a great deal of time was spent on this file. Barry O'Neil bills at \$250 per hour. Valerie Sims bills at \$200 per hour. Kay Hunt, an appellate specialist, bills at \$300 per hour. The firm's paralegals bill at \$85 per hour. The firm's billing sheet indicates the number of hours that these attorneys and paralegals worked on the case. For the most part, the hours worked appear to be reasonable. The one exception involves Ms. Sims' attendance at the trial. Mr. O'Neil explained at the Motion hearing that Ms. Sims was at trial in anticipation of cross-examination of the possible twenty-odd defense witnesses who were listed for trial by the Defendant. However, it should have been foreseen that none of those witnesses would have been difficult cross-examination subjects. The Plaintiff knew that these witnesses were going to be testifying to explain why they signed the Do Not Contact list. It seems to the Court that a generalized cross-examination outline would have sufficed for all of those witnesses, and that only one attorney was needed to do the cross examination. Therefore, the Court concludes that Ms. Sims did not need to be at the trial. It appears that her billing for the day of trial also includes some additional work. The Court concludes that of the 8 hours billed by her that day, 7 hours were for the trial appearance. Therefore, the Court is deducting \$1,400 from the total claim for reasonable attorneys fees.

2. **Nature and difficulty-** The Court does not find this case to be factually complicated or difficult. The complications and difficulties arose out of the legal issues. The parties and the Court were dealing with a statute that had not been interpreted by appellate courts. The constitutionality of the statute was in question. The Plaintiff was required to first obtain a temporary restraining order, and then proceed to trial on the injunction request. Thus, the case was more complicated than some, but not extremely so.

3. **Amount and results-** The Court assumes that, in talking about "amount," the Supreme Court was referring to the amount of money involved. Here, money was not an issue. Therefore, the Court cannot consider this factor. Instead, the Court would consider the "stakes" to be the Plaintiff's right to free speech and access, versus the Defendant's right to control its

private property. These are important rights, and the parties were justified in expending considerable attorneys' fees to fight for them.

The "results" are apparent from the Court's order. However, whether those results are consistent with the ultimate goals of the parties is hotly disputed. Both sides have presented affidavits to the Court that, in some ways, are diametrically opposed as to the claimed status of negotiations. It would have been extremely helpful if the defense had made their final offer to settle the matter in writing, to remove any doubt about what the terms were. Because of the attorneys' inability to agree as to the facts regarding negotiations, the Court believes it appropriate to not consider them, but to instead consider what the Court observed in Court, and what makes the most sense to the Court.

First, the Plaintiff completely prevailed at the initial hearing on the temporary injunction. Therefore, the Plaintiff is entitled to the full attorneys fees and costs that were expended up to and through the initial hearing.

Second, the Plaintiff partially prevailed at trial. Therefore, the Plaintiff should be entitled to an award of a reasonable portion of the attorneys' fees they incurred through trial. The question before the Court is what that reasonable portion should be.

The Plaintiff's post-trial motions are the best indication that they did not fully "prevail" at trial. They apparently wanted to have the Do Not Contact list enjoined, and they wanted to have more hours on the Ardmore premises than the Court was willing to provide. The absence of counter-motions by the Defendant is a further indication that the Plaintiffs did not fully prevail at trial.

6. **Customary fees-** The Court is not aware of cases similar to this one. The Court has no reason to doubt, however, that the fees charged in this case are similar to those customarily charged in similar types of cases.

7. **Experience, reputation and ability of counsel-** The Plaintiff's attorneys practice law with a very well-regarded Twin Cities law firm. Plaintiffs' attorneys, in their court appearances and written submissions, showed themselves to be excellent advocates.

8. **Fee arrangement-** The Plaintiff's fee arrangement is outlined in Valerie Sims' February 3, 2004 letter, and indicates that the billing rates are as noted in #1, supra.

Taking all of the foregoing factors in consideration does not lead to a clear conclusion. *State v Paulson*, supra, does not indicate the weight to be given to each factor, so the Court assumes that such a determination is within the Court's discretion. The Court believes that the hourly fee charged by Plaintiff's lawyers is reasonable. The Court also believes that the time put in to the case by those lawyers was reasonable. However, the Court believes that the "outcome" factor is quite important here. The outcome was apparently not that sought by the Plaintiffs, and it would thus be inappropriate to require the Defendants, who "won" to a certain extent, to pay all of the Plaintiff's legal fees and costs.

Reducing the "outcome" to a strict mathematical formula would be quite difficult in this case. It could reasonably be argued that the Plaintiffs lost the issue of the Do Not Contact List, and only partially prevailed on the issue of hours, and that they therefore should be entitled to only about 1/3 of their attorneys' fees claim. However, the Court believes that this would not be

a fair assessment of the circumstances, and would be contrary to the intent of the law. The statute, Minn. Stat. §327C.13, is clearly for the benefit of individuals and organizations such as APAC. The Court should interpret the law in such a manner as to insure the protection of the rights outlined in that statute. While APAC did not achieve all of its goals through this litigation, it did achieve some considerable goals. It seems to the Court, after careful consideration, that it would be appropriate to award APAC two-thirds of its total attorneys fees and costs. The Court recognizes that this would amount to less than two-thirds of the fees and costs incurred since the time that the temporary restraining order was granted, since the Court has determined that all fees and costs up to the time of the hearing on the restraining order should be paid by the Defendant. However, in looking at the overall picture, the award of two-thirds appears reasonable.

Additionally, the Plaintiffs have asked for fees associated with its post-trial motion costs. Again, it could be argued whether or not the Plaintiff prevailed in its post-trial motions. The Plaintiff did obtain some slightly expanded hours during the warmer months of the year, and this was at least a partial "victory." Rather than requiring the Plaintiff to file further affidavits and time records (because the Court is familiar with the work product that resulted from the labor of the attorneys) the Court finds that the result obtained is worth attorneys fees and costs of an additional \$2,000.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

All Parks Alliance for Change,

Court File Number: C4-04-6504

Plaintiff,

**ORDER ON TEMPORARY INJUNCTION REQUEST
AND SETTING THE MATTER FOR TRIAL**

vs.

Uniprop Manufactured Housing Communities
Income Fund, d/b/a Ardmor Village,

Defendant.

The above-entitled matter came before the Honorable Robert King, at the Dakota County Judicial Center, Hastings, Minnesota, on March 3, 2004 for a hearing at Plaintiff's motion request for a hearing seeking a temporary injunction and Defendant's opposition to Plaintiff's motion. Both parties submitted written argument to the Court subsequent to the hearing and the subsequent filings by the attorneys were timely.

Valerie Sims, Attorney at Law, appeared on behalf of Plaintiff and in substitution for Barry O'Neil, Attorney at Law, attorney for record for Plaintiff. John F. Bonner, Attorney at Law, appeared on behalf of Defendant.

Based upon all of the files, records, and proceedings herein the Court makes the following:

FINDINGS OF FACT

1. Plaintiff All Parks Alliance for Change (hereinafter known as "APAC") is a Minnesota non-profit organization located in St. Paul, Minnesota.
2. Defendant Uniprop Manufactured Housing Communities Income Fund, doing business as Ardmor Village (hereinafter known as "Uniprop"), is a Michigan limited partnership doing business in Minnesota as the owner and operator of

FILED DAKOTA COUNTY
VAN A. ROOSTER, Court Administrator

Ardmor Village, a manufactured housing community located in Lakeville, Minnesota, which has 339 rental lots and houses and over 500 residents.

3. APAC provides information intended to give an effective voice, based upon Minnesota law, to low and moderate income homeowners to express their needs and concerns in the community through organizing, canvassing and leadership development, specifically focusing on manufactured home renters and owners.
4. APAC's primary method of reaching residents of manufactured homes is through dispersing flyers throughout a manufacturing home community and speaking with those residents who wish to speak with them, a method of canvassing.
5. On April 15, 2003, Jess Luce, an APAC employee, was approached by a member of Unipro management of the Ardmore Village and was told by the member of Unipro management not to continue to hand out flyers in the community.
6. As a result of the interaction between the APAC employee and Unipro management personnel of Ardmore Village, the Lakeville Police were called and APAC, through their employee, Jess Luce, were told they were prohibited from distributing leaflets to Ardmore residents through canvassing.
7. On June 11, 2003 two APAC employees, again encountered Unipro management personnel of Ardmore Village at Ardmore Village, while the APAC employees were attempting to leaflet Ardmore Village, and were directed to leave Ardmore Village premises and escorted from Ardmore Village premises.

8. On June 11, 2003, APAC employees related they were told by Uniprop management personnel of Armor Village that the flyers APAC was distributing could be deposited in the front office of Armor Village management's office, but Armor Village management stated Armor Village residents rarely visit the office and would likely not receive the information.
9. Uniprop management personnel of Armor Village did provide APAC with a mailing list and stated leaflets could be mailed to Armor Village residents directly, which it seems APAC did at a cost higher than leafleting.
10. As a result of APAC only being able to reach Armor Village residents through mailing flyers APAC incurred \$590.16 in additional expenses to deliver by United State mail the information flyers.

CONCLUSIONS OF LAW

1. The test for determining whether to grant injunctive relief requires consideration of the following five factors: 1) the nature of the relationship between the parties before the dispute giving rise to the request for relief; 2) the relative hardship which will be suffered by the parties if the injunction is granted compared to the that suffered if injunctive relief is denied; the likelihood of success of merits of the plaintiff's claim; the public interest; and the administrative burden on the Court. Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-75; 137 N.W.2d 314, 321-22 (1965); Webb Pub. Co. v. Fosshage, 426 N.W.2d 445, 448 (Minn. Ct. App. 1988).
2. The nature of the relationship of the parties before the dispute is that the parties were unknown to each other and the defendant has and continues to have

greater relative power in reaching Armor Village residents than the plaintiffs due to the defendant's management of the property and ability to set restrictive rules informing Armor Village residents the set rules must be followed, in the absence of the plaintiffs being able to inform Armor Village residents of their legal rights under Minnesota law through APAC's exercise of free speech as well as the exercise of free speech rights of Armor Village residents. The defendant then has more relative power and control than the plaintiff and can control the very disputed issues in this matter. This factor favors the plaintiff.

3. The hardship on Uniprop is less of a hardship than the hardship on APAC if an injunction is not issued. An injunction would simply direct Uniprop to discontinue preventing APAC from exercising their freedom of speech rights and freedom of expression rights granted under Minnesota law, pursuant to Minn. Stat. Sec. 327C.13. APAC continues to face costs associated with communication with Armor Village residents by United States mail to distribute information APAC could provide to Armor Village residents for less cost if allowed to leaflet on Armor Village premises. On the other hand; Uniprop incurs no legal costs if the injunction is entered, as they will not be prevented from taking legal actions involving APAC employees and volunteers and Armor Village residents. Uniprop management of Armor Village will still be able to contact law enforcement should APAC employees or volunteers go beyond the grant of injunctive relief. Additionally, Uniprop would not be required to post a bond in this matter, as both parties should be acting in good faith at this point and have sufficient funds to proceed in this matter, at this time. This factor favors the plaintiff.

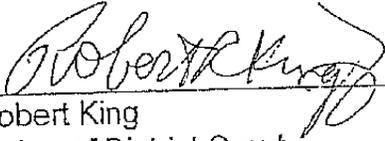
4. APAC has made a strong showing at this point of success on the merits, pursuant to Minnesota law, as set out in Minn. Stat. Sec. 327C et. Seq. and the legislative history supporting this statute. This factor favors the plaintiff.
5. The public interest can be argued to favor issuance of injunctive relief in favor of the plaintiff because a portion of the public reside in manufactured home communities such as Armor Village and it is in the public interest that residents of such closed communities receive proper legal information about their rights relating to manufactured homes and the regulation of communities where they are located. This factor favors the public, and as the plaintiff is attempting to assist the public, this factor favors the plaintiff.
6. Issuance of injunctive relief in this case will impose little administrative burden on the Court, as long as the parties proceed in good faith, continue to attempt negotiations on the disputed issues and follow the directive of the Court.

IT IS HEREBY ORDERED:

1. Plaintiff's motion for a temporary restraining order is **GRANTED**. That is, until a final resolution on this matter or further order of the Court, Defendant and all people in active concert or participation with Defendant who receive notice of the Order, which shall be posted prominently on Defendant's premises, where the disputed action is taking place, is restrained and enjoined as follows:
 - a. Defendant shall not prevent, prohibit, or otherwise interfere with Plaintiff or Plaintiff's employees or volunteers' peaceful leafleting, canvassing, and/or organizing residents at Ardmore Village Manufactured Home Community during the hours of 9:00 a.m. until 8:00 p.m., Monday through Saturday.

- b. Defendant shall not divert or otherwise interfere with the relationship between Plaintiff's employees and volunteers and Ardmore residents.
2. The requirement of posting a bond is waived, at this time.
 3. The First Judicial District Scheduling Office, Dakota County, shall issue a scheduling Order in this matter, including setting this matter for pre-trial, setting filing deadlines, and setting a court date. A copy of this Order is being forwarded to the First Judicial District Scheduling Office, Dakota County.
 4. Any District Court Judge may hear the trial in this matter, unless there is an Order assigning a specific judge prior to the date of the hearing.

Dated: March 31, 2004



Robert King
Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

All Parks Alliance for Change,

Court File Number: C4-04-6504

Plaintiff,

**ORDER ON TEMPORARY INJUNCTION REQUEST
AND SETTING THE MATTER FOR TRIAL**

vs.

Uniprop Manufactured Housing Communities
Income Fund, d/b/a Ardmore Village,
Defendant.

The above-entitled matter came before the Honorable Robert R. King, Jr. at the Dakota County Judicial Center, Hastings, Minnesota, on August 25, 2004 for a hearing on Plaintiff's Motion for Summary Judgment.

Barry O'Neil, Attorney at Law, appeared on behalf of Plaintiff. Thomas F. DeVincke, Attorney at Law, appeared on behalf of Defendant.

Based upon all of the files, records, and proceedings herein the Court makes the following:

FINDINGS OF FACT:

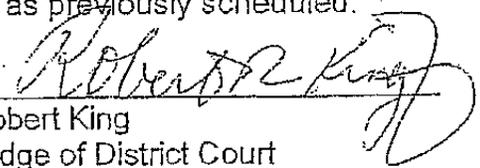
1. There is a legitimate fact question regarding the reasonableness of the new rules in place at Ardmore Village Manufactured Home Community.

Based on the foregoing Findings, the Court makes the following:

ORDER:

1. The Plaintiff's Motion for Summary Judgment is DENIED.
2. The matter shall continue on for trial as previously scheduled.

Dated: September 3, 2004


 Robert King
 Judge of District Court

FILED DAKOTA COUNTY
 VAN A. PROCTOR, CLERK

SEP 7 2004

DCB

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT
Court File No. CT-04 _____

Type of Case: Other/Civil

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

VERIFIED COMPLAINT

v.

Uniprop Manufactured Housing Communities
Income Fund, d/b/a Ardmor Village,

Defendant.

For its Verified Complaint, Plaintiff All Parks Alliance for Change states and alleges as follows:

1. Plaintiff All Parks Alliance for Change ("APAC"), is a Minnesota non-profit organization located at 2395 West University Avenue, Suite 302, St. Paul, Minnesota, 55114.
2. Defendant Uniprop Manufactured Housing Communities Income Fund, ("Uniprop") is a Michigan limited partnership doing business in Minnesota as the nameholder, owner and operator of Ardmor Village, a manufactured housing community located at 20990 Cedar Avenue South, City of Lakeville, in Dakota County, Minnesota. Ardmor Village consists of 339 rental lots and houses over 500 residents.
4. This Court has jurisdiction over the subject matter of this action pursuant to Article 6, § 3 of the Minnesota Constitution, and personal jurisdiction over Defendant pursuant to Minn. Stat. § 543.19, subd. 1. Venue is proper in Dakota County since the cause of action arose in whole or in part in Dakota County and APAC suffered injury in Dakota County. Furthermore, Defendant's place of business is located in Dakota County.

5. APAC provides an effective voice for low and moderate income homeowners to express their needs and concerns in the community through grass-roots organizing and leadership development. The organization's primary method of reaching residents is through flyers disbursed throughout a manufactured home community.

6. On April 15, 2003, Uniprop, by and through its management employees at Ardmore, prevented APAC employees from distributing leaflets within the community. Attached hereto as Exhibit 1 is an affidavit of Jess Luce detailing the encounter.

7. On June 11, 2003, Uniprop, by and through its management employees at Ardmore, prevented APAC employees from distributing leaflets within the community. Attached hereto as Exhibit 2 is an affidavit of Amanda Jackson detailing the encounter. Attached hereto as Exhibit 3 is an affidavit of Ned Moore detailing the encounter.

8. As a result of management's unlawful prohibition of leaflet distribution and canvassing at Ardmore, APAC incurred \$590.16 in additional and unnecessary expenses to deliver the information to residents directly by U.S. mail. Attached hereto as Exhibit 4 is a detailed summary of the additional expenses.

COUNT 1

DECLARATORY JUDGMENT MINN. STAT. § 555.01, et. seq.

9. Plaintiff hereby realleges each of the foregoing allegations of this Complaint as if fully set forth herein.

10. This court has jurisdiction to determine any question of construction or validity arising under any instrument, statute, ordinance, contract or franchise, and APAC is entitled to obtain a declaration of its rights, status, or legal obligations thereunder.

11. A justiciable controversy exists as to the interpretation of Minn. Stat. § 327C.13, specifically the scope of "reasonable limits as to time, place and manner" language in the statute.

12. Plaintiff seeks an order permitting APAC employees to peacefully organize, assemble, canvass, disburse leaflets or otherwise exercise its right of free expression within Ardmore Village during regular business hours and early evenings and prohibiting Ardmore management from preventing such lawful conduct.

COUNT II

VIOLATION OF SECTION 327C.13 OF MINNESOTA STATUTES

13. Plaintiff hereby realleges each of the foregoing allegations of this Complaint as if fully set forth herein.

14. APAC has a right of free expression within Ardmore Village for noncommercial purposes pursuant to Minn. Stat. § 327C.13.

15. Defendant has violated Minn. Stat. §§ 327C.13 by prohibiting APAC from peacefully organizing, assembling, canvassing, leafletting or otherwise exercising its right of free expression within Ardmore Village.

16. Plaintiff has been injured by Defendant's violation of Minn. Stat. §327C.13 in an amount of \$590.16 and is entitled to an injunction, costs, investigation fees and reasonable attorney's fees pursuant to Minn. Stat. §327C.15 and §8.31, subds. 1 and 3(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Enter an injunction against Defendant restraining it from prohibiting APAC from peacefully organizing, assembling, canvassing, leafletting or otherwise exercising its right of free expression within Ardmore Village;
2. Declare that Minn. Stat. Sect. 327C.13 permits APAC employees to peacefully organize, assemble, canvass, disburse leaflets or otherwise exercise its right of free expression within Ardmore Village during regular business hours and early evenings;
3. Adjudge and decree that Defendant violated Minn. Stat. §327C.13 as alleged in the Second Cause of Action of this Complaint;
4. Award Plaintiff its actual damages of \$590.16, plus interest thereon;
5. Award Plaintiff its costs and disbursements, including investigation costs and reasonable attorney fees in connection with this action pursuant to Minn. Stat. §§ 327C.15 and 8.31 and other applicable statutes and common law; and
6. Grant Plaintiff such other and further relief as this Court may deem just and proper.

Dated: February 13, 2004

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

BY 

Barry A. O'Neil, I.D. No. 220875

Valerie Sims, I.D. No. 30556X

Attorneys for Plaintiffs

2000 IDS Center

80 South 8th Street

Minneapolis, MN 55402

(612) 339-8131

FAX: (612) 339-8064

ACKNOWLEDGMENT

The undersigned attorney for the Plaintiffs in the above captioned matter hereby acknowledges that pursuant to Minn. Stat. § 549.211, costs, disbursements, witness fees, and reasonable attorney's fees may be awarded to Defendant in the event Plaintiffs are found to be acting in bad faith and/or asserting a frivolous claim.



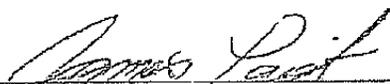
Valerie Sims

VERIFICATION

As Executive Director for Plaintiff All Parks Alliance for Change, a Minnesota non-profit organization, in the above entitled action, I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I am competent to testify to the accuracy of the facts therein stated if called upon to do so and will only affirm each question as asked.

I declare under penalty of perjury under the laws of the State of Minnesota that the foregoing is true and correct.

Date: February 22, 2004



James Paist
All Parks Alliance for Change

3/10

CASE TYPE: OTHER CIVIL

DISTRICT COURT

STATE OF MINNESOTA

FIRST JUDICIAL DISTRICT

COUNTY OF DAKOTA

All Parks Alliance for Change,
a Minnesota non-profit organization,

Court File No. C4-04-6504

Plaintiff,

ANSWER

vs.

Unipro Manufacturing Housing Communities
Income Fund, d/b/a Ardmor Village,

Defendant.

Defendant Unipro Manufacturing Housing Communities Income Fund, d/b/a Ardmor Village
makes the following Answer to Plaintiff's Complaint:

1. Defendant is without knowledge as to the truth of the allegations set forth in Paragraph 1 and, accordingly, leave Plaintiff to its strictest proof thereof.
2. Denied.
3. There is no Paragraph 3 in Plaintiff's Complaint.
4. Paragraph 4 contains numerous legal conclusions for which no answer is required. To the extent an answer is required, Defendant denies the allegations set forth in Paragraph 4.
5. Denied.

6. Denied.
7. Denied.
8. Denied.

COUNT I

Declaratory Judgment Minn. Stat. § 555.01, et. seq.

9. Defendant realleges each preceding paragraph as if set forth fully herein.
10. Denied.
11. Defendant denies that a justiciable controversy exists as to the interpretation of Minn. Stat. § 327C.13. The scope of "reasonable limits as to time, place and manner" has been exhaustively considered by numerous Courts.
12. Denied.

COUNT II

Violation of Minn. Stat. § 327C.13

13. Defendant realleges each preceding paragraph as if set forth fully herein.
14. Denied.
15. Denied.
16. Denied.

Affirmative Defenses

1. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.
2. Plaintiff's damages, if any, were caused by Plaintiff's own acts and/or omissions.
3. Plaintiff lacks standing to bring this civil action.

4. Plaintiff organization is not in good standing with the Minnesota

WHEREFORE, Defendant prays this Court for:

1. An Order dismissing Plaintiff's Complaint;
2. A Judgment declaring Defendant has not violated 327C.013;
3. An Order awarding Defendant its costs, disbursements and attorney's fees incurred

in defending Plaintiff's claims; and

4. All other relief that the Court deems just and equitable.

Dated: March 9, 2004.

BONNER & BORHART LLP

By 

John F. Bonner, III (#9726)

Thomas F. DeVincke (#301759)

Suite 1750

220 South Sixth Street

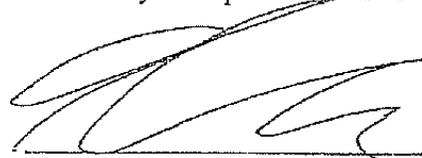
Minneapolis, MN 55402

Tele: (612) 313-0711

Attorneys for Plaintiff

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under the circumstances set forth pursuant to Minnesota Statutes, § 549.211.


John F. Bonner, III (#9726)

Thomas F. DeVincke (#301759)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Court File No. _____

Type of Case: Other/Civil

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

v.

**PLAINTIFF'S SECOND AMENDED
NOTICE OF MOTION AND MOTION
FOR A TEMPORARY INJUNCTION**

Unipro Manufacturing Housing Communities
Income Fund, d/b/a Ardmor Village,

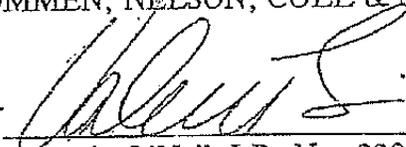
Defendant.

TO: Defendant above named and its attorney.

PLEASE TAKE NOTICE, that the undersigned will bring a motion for a temporary injunction pursuant to Minn. Rule Civ. P. 65.02 and Minn. Stat. § 8.31 subd. 3a for an order restraining Defendant from preventing APAC employees from leafleting, canvassing, and organizing residents at Ardmor Village Manufactured Home Community during regular business hours and early evenings for hearing before a Judge of District Court, to be held in the Dakota County Judicial Center, in the City of Hastings, County of Dakota, on March 3, 2004 at 9:00 a.m. This motion is made upon the Verified Complaint, Memorandum of Law in Support of Motion, affidavit of Valerie Sims and proceedings herein.

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

Dated: February 18, 2004

BY 

Barry A. O'Neil, I.D. No. 220875

Valerie Sims, I.D. No. 30556X

Attorneys for Plaintiffs

2000 IDS Center

80 South 8th Street

Minneapolis, MN 55402

(612) 339-8131

FAX: (612) 339-8064

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Court File No. C4-04-6504

Type of Case: Other/Civil

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

NOTICE OF MOTION AND MOTION
FOR AMENDED FINDINGS OR, IN
THE ALTERNATIVE, NEW TRIAL

v.

Unipro Manufacturing Housing Communities
Income Fund, d/b/a Ardmor Village,

Defendant.

TO: Defendant above named and its attorney, Thomas F. DeVincke, Bonner & Borhart,
LLP, 1750 Pillsbury Center, 220 South Sixth Street, Minneapolis, MN 55402.

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the following Motion on for hearing before the Honorable Robert King, Judge of District Court for the First Judicial District of the State of Minnesota, in the Dakota County Judicial Center, 1560 West Highway 55, Hastings, Minnesota, on the 14th day of February, 2005, at 9:00 a.m., or soon thereafter as counsel may be heard.

MOTION

Plaintiff hereby moves the Court for amended findings or, in the alternative, a new trial on the following grounds:

1. The Court's conclusion that the Defendant's "no-contact" list is reasonable and enforceable is not justified by the evidence and/or is contrary to law; and

2. The Court's addition of limited Saturday hours for leafleting and canvassing the Ardmore premises with no evening or Sunday hours is not justified by the evidence and/or is contrary to law.

This motion is made pursuant to Rules 52.02 and 59.01 (f) and (g) of the Minnesota Rules of Civil Procedure and are based upon all files, exhibits, and minutes of the Court, and all other records of the proceedings herein.

Dated: 1-13, 2005

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

BY Valerie Sims

Barry A. O'Neil, I.D. No. 220875

Valerie Sims, I.D. No. 30556X

Attorneys for Plaintiff

2000 IDS Center

80 South 8th Street

Minneapolis, MN 55402

(612) 339-8131

FAX: (612) 339-8064

Doc. #250322

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Court File No. C4-04-6504

Type of Case: Other/Civil

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

v.

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT AND A
PERMANENT INJUNCTION**

Unipro Manufacturing Housing Communities
Income Fund, d/b/a Ardmor Village,

Defendant.

TO: Defendant above named and its attorney, Thomas F. DeVincke, Esq., Bonner &
Borhart, LLP, 1750 Pillsbury Center, 220 South Sixth Street, Minneapolis, MN 55402.

NOTICE OF MOTION

PLEASE TAKE NOTICE that, at the hearing to be held before the Honorable Robert King, Judge of Dakota County District Court on August 25, 2004 at 9:00 a.m. in the Dakota County Judicial Center, 1560 West Highway 55, Hastings, Minnesota, Plaintiff above named, through its attorneys will move the Court for an Order as follows:

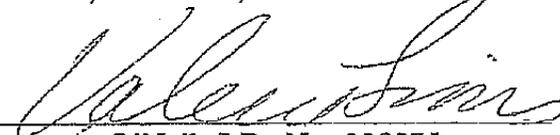
MOTION

Plaintiff respectfully moves the Court pursuant to Rule 56 of the Minnesota Rules of Civil Procedure for an order granting Plaintiff summary judgment and for an order permanently restraining and enjoining Defendant, and all persons acting in concert with it, from prohibiting or interfering with Plaintiff and Plaintiff's employees or volunteers' peaceful leafleting, canvassing, and/or organizing residents at Ardmor Village Manufactured Home Community.

This motion is made upon the files, records and proceedings herein in addition to the Memorandum of Law and Affidavit of Valerie Sims, with its attached exhibits that are submitted with this Motion.

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

Dated: July 28, 2004

BY 

Barry A. O'Neil, I.D. No. 220875

Valerie Sims, I.D. No. 30556X

Attorneys for Plaintiffs

2000 IDS Center

80 South 8th Street

Minneapolis, MN 55402

(612) 339-8131

FAX: (612) 339-8064

Doc. #230861

went on to state that he had spoken with his attorney and he felt he had the right to remove us from the park, alleging he had received complaints from residents about our presence in the park.

4. He also stated that because we had already been "allowed" to pass out flyers once, residents had all the information they needed and that there was no need for us to pass out flyers at Ardmore again. He then offered to take our flyers and put them up in the park office, a proposition that was unacceptable to us for a number of reasons.

5. We then explained to him that this flyer contained completely different information from the original flyer we had passed out the first time; that the first flyer only contained general information about APAC, whereas this one advertised a workshop that we had scheduled for the following week. He then appeared to show a clear lack of understanding of what our organization is about, saying that we were trying to incite residents and encourage them to break their leases. We then explained that in fact the goal of the meeting was simply to inform residents of their legal rights and responsibilities.

6. After asking him how he felt jeopardizing the residents right to receive this information and to learn more about their protections under Minnesota law, he seemed unconcerned, stating instead that he was asserting his rights which apparently in his mind outweigh any consideration for the hundreds of families living in his park.

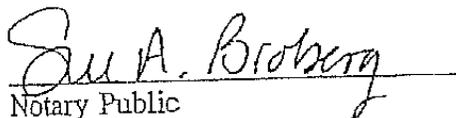
7. After it was made absolutely clear that the park manager intended to remove us from the park, Amanda then suggested a compromise, in which we could record the address sequence of the park and mail the rest of the flyers to the residents, which he agreed to, giving us a copy of the park's map which contained the addresses of each lot.

8. Having to mail the flyers instead of simply leaving them at each home put us at a disadvantage not only because it gave the residents less notice of the meeting, it was also less likely to be read by residents. This was clearly shown by our turnout. According to our sign-in sheets at the meeting, residents living in the section that we passed out flyers personally were the ones who showed up at the meeting to compared to the flyers that were ultimately mailed. If we had been allowed to pass out flyers to the whole park (based on the turnout percentage from the area we were able to cover) there would have likely been about two dozen more people attending the following week to learn about their legal rights.

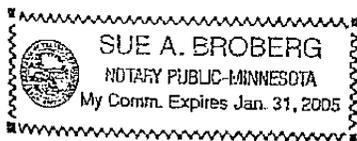
FURTHER YOUR AFFIANT SAITH NOT.


Ned Moore

Subscribed and sworn to before me
this 12th day of February, 2004.


Notary Public

Doc. #213113



yelled for both of us to come over to him, when we did so, he asked what we were doing. I explained to him that we were passing out a flyer and offered him one. He took it, glanced it over and gave it back. He then said he could not let us continue. We showed him 327C.13 but he said he disagreed. I indicated to him that as long as we were not soliciting he couldn't stop us. He smiled, said he knew our organization and told us he knew we only did this with the intention of gaining money through membership. I explained that we were doing this because of a high volume of calls, and would continue with it regardless of membership. Additionally our income from membership is minimal compared to our operating expenses, and our primary source of income is through foundations. He said he also received calls, asking that we not be allowed to come into the park anymore, but was extremely vague when we asked how many residents called or what their reasons were for not wanting us in the park.

4. After unsuccessfully attempting to contact our Executive Director and our attorney (Tom White), we were told that it was time to leave. Again, we told him we have the right to flyer the park, the manager said he was exercising his "right" to limit time, manner and place. He said we could leave the flyers in the office. When asked, he openly admitted that residents don't often go to the office, and most would probably not see the flyer within the next week. We told him that is not how the statute is interpreted, and referred to Tom White's letter. That manager said his attorney had spoken with Tom White about the issue, and that Ardmore's attorney disagreed with Mr. White's interpretation.

5. Since we were unable to get guidance from our organization nor our attorney, and this manager seemed close to the end of his temper, I decided we would have to leave the park unfinished. In the interest of having some way to contact residents, I indicated that we could perhaps do a mailing to residents this time, until the attorneys hash this out. The manager was

fine with this idea, and offered to give us a map with the mailing sequence. He told us to meet him back at the office.

6. On our way to the office, a resident stopped us to ask if we had left the flyer on her door. We said yes and explained the basics of the current situation. This resident indicated that she (and most of her neighbors) had issues with management and was happy to hear someone could help. The resident said she had no idea who was calling management complaining about us, and also expressed skepticism about the truth of the manager's statement.

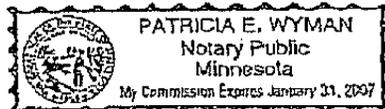
7. After getting the mailing sequence from the manager, we left the park. Ned Moore and I went to the Lakeville Police Department to see if they could help us in this situation. The officer we talked to said he wasn't able to help because he was unfamiliar with this particular law. Next, we went to the city office building to talk to the City Attorney because his office was not in their building. We took his phone number and called from the car. The attorney was not in but did call us later. He indicated that Tom White had not spoken to him about this subject and he didn't really know enough about it offhand to comment. At that point we were on our way home, so we didn't push the issue.

FURTHER YOUR AFFIANT SAITH NOT.


Amanda Jackson

Subscribed and sworn to before me
this 12th day of February, 2004.


Notary Public



Doc. #213216

residents and a copy of a letter from APAC's attorney. He appeared to read over the information for a couple of minutes, and after reading the letter from our attorney, the gentleman proceeded to argue that the park has a right to restrict the time, manner, and "place" of our passing out information. I told him he was taking that out of the overall context of the statute and going against its intent, which is to allow residents and organizers to help get valuable information to residents.

4. I gave him an example of how that portion of the statute could be used: to not allow organizers or residents to flyer and door knock after 10:00 p.m. He said we could leave the flyers at the office, and I told him that was unacceptable. I asked him, what gives management the right to filter information for residents? We have a right to get this information directly to residents. He asked me if I was knocking on the doors of residents. I said I was not, only placing flyers in door handles and talking to those people that were outside, and that if I wanted to knock on doors, I have that right, but today I don't have time to knock on all the doors.

5. After this line of discussion was repeated over and over, a Lakeville police officer showed up (John Aroidson, Badge #4825). We introduced ourselves, and the officer asked if this was going to be easy and the manager responded by saying yes. Again, the manager referred to what I was doing as solicitation after I had clearly indicated that this is not what we were doing. I quickly summarized the situation for the officer, telling him what we were doing and that APAC has a right to distribute information, which is authorized by the state of Minnesota in regards to our organization's Freedom of Expression. The officer was not

familiar with the statute. He was more concerned with proving to me that there was no proof of authenticity in my documents (no stamp of notoriety), suggesting that I could produce a copy of the state statute at home on my computer. Also, he indicated that I could be "casing" the park, looking to steal private property. I told him that clearly this is not what I am doing. He said he did not know me from the "Unabomber," and joked with the manager that these are heightened times of terrorism and they have to be careful.

6. At some point in the dialogue, he asked for my identification and took issue with the fact that I still have Colorado identification.

7. Ned Moore and Amanda Jackson, my coworkers, appeared and were called over by the manager and asked by the officer to turn over their driver's licenses. The identifications were run through the officer's computer and no violations/warrants were found.

8. The officer then called Lt. Schwartz on the phone and asked him what should be done. The information relayed from Lt. Schwartz through the officer was that we needed to prove that APAC is a legal, registered nonprofit organization, indicating that we should be carrying around our certificate of 501C3 status. I told him that the Freedom of Expression statute does not require us to do this, and he suggested that the City of Lakeville has more stringent requirements regarding solicitation than other communities. At this point I stopped my line of arguments because I am not familiar with Lakeville's specific ordinances. I took another approach, saying that this is fine, the City of Lakeville could face a lawsuit for not allowing APAC to pass out information. The officer then got more serious and asked if he was going to have to fill out a "full report," and with this change of tone I retracted my line of

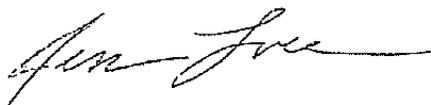
conversation. I then tried to summarize what we would need to do to come back out to Ardmor Manufactured Home Park, asking officer Aroidson if we could fax APAC's certificate of nonprofit status to the Lakeville Police Department, and he said that would be fine. The manager spoke up and said that if we came back out to the park that we could leave the flyers at the front office for people to come get on their own, and I reiterated to him that this was unacceptable.

9. Then we left the park to go to lunch and contacted the director, Jim Paist, to have him fax the information (APAC's certified 5013C status) to the Lakeville Police Department, which he did at 1:00 p.m. that same day, before which time I had contacted the Lakeville Police Department to let them know that it was coming.

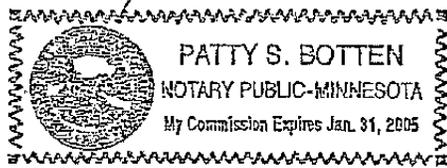
10. We proceeded after lunch and after the certificate of nonprofit status had been faxed to the Lakeville Police Department to flyer two more parks in Lakeville: Connolly Estates and Queen Ann. In future we are planning to go back to Ardmor to deliver flyers to each household. We are not going to leave the flyers with management at the front office where it is unlikely that residents would never see the information.

FURTHER YOUR AFFIANT SAITH NOT.

Jess Luce



Subscribed and sworn to before me
this 1st day of February, 2004.


Notary Public

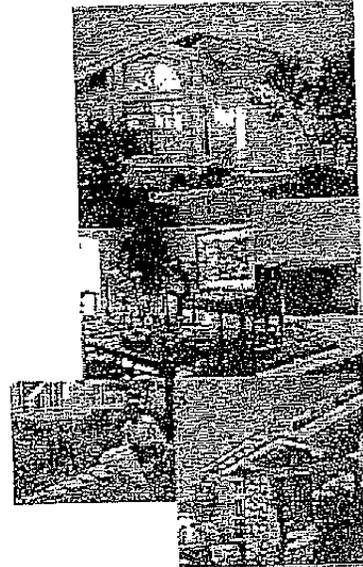
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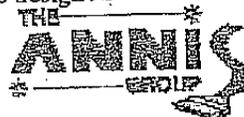
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- SOUTHERN
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3 PORTFOLIO

4 CORPORATE OVERVIEW

5 LATEST RESULTS OF PUBLIC FUNDS

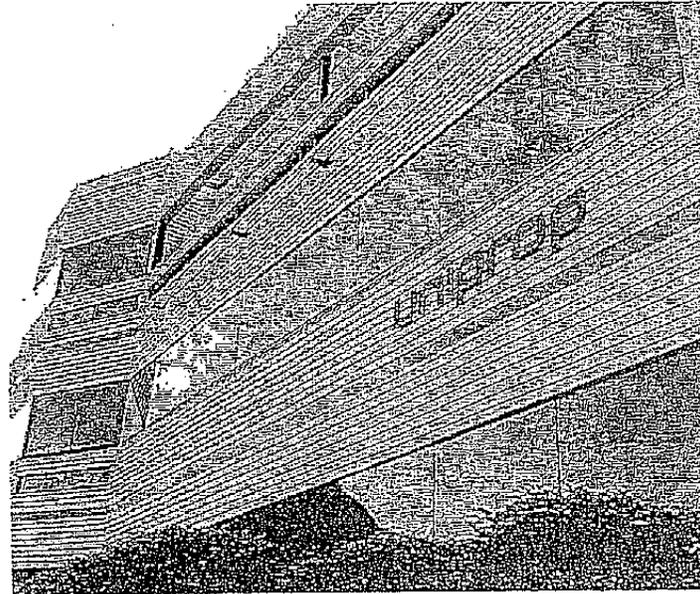
6 REQUEST INFORMATION

7 HOMEPAGE

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- ✓ FIND A HOME OR A COMMUNITY
- ✓ PORTFOLIO
- ✓ CORPORATE OVERVIEW
- ✓ LATEST RESULTS OF PUBLIC FUNDS
- ✓ REQUEST INFORMATION
- ✓ HOMEPAGE



THE COMPANY

THE PORTFOLIO

THE PROFESSION

Uniprop is a nationally recognized, full-service real estate investment firm head Birmingham, Michigan.

From the beginning, Uniprop's corporate mission has been the long-term ownership producing properties.

Currently, Uniprop specializes in the acquisition, development, marketing, and man manufactured home communities. The company has integrated sales, financial, prop operations, and development capabilities.

Uniprop and its affiliates currently own or operate approximately 41 manufactured l communities in diverse locations throughout the country, as well as other residential commercial properties. Today, Uniprop is one of the nation's largest owners of man home communities.

STATE OF MINNESOTA

SENATE COUNSEL

PETER S. WATSON
LARRY R. FREDRICKSON
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DANIEL P. MCGOWAN
JANEL M. BUSH
LEIGHT J. JONES
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BRAD S. ERVIN



450 STATE OFFICE BUILDING
ST. PAUL 55155
(612) 296-2500

February 15, 1982

TO: Members of the Energy and Housing Committee
FROM: Janel M. Bush, Senate Counsel
RE: Bill Summary - S. F. No. 1918 with proposed author's amendments

S. F. No. 1918 would make major changes in current laws governing the licensing of manufactured home manufacturers and dealers, and the rights and duties of owners and residents of manufactured home parks. The bill would also make certain substantive and technical changes to current laws governing the titling and repossession of manufactured homes and the health and safety standards of manufactured home parks. The following summary highlights the major changes to existing law which S. F. 1918 would make.

Article I: Manufactured Home Sales

Article I of S. F. No. 1918 deals with the licensing, bonding and trade practices of manufactured home manufacturers and dealers.

Section 5 [Manufacturers and Dealers; Licenses; Bonds.] sets forth the licensing procedure to be followed by applicants. As under current law, this section requires manufacturers and dealers to be licensed by the commissioner of administration and have a \$20,000 surety bond. However, section 5 imposes a new requirement that applicants who do business at more than one location must obtain a license for the principal location and a separate subagency license for each additional location. Section 5 also permits the commissioner to set license fees by administrative rule, in an amount sufficient to cover the costs of administering the law (current law sets the fee at \$44), and it extends the term of the license from one to two years.

Section 6 [Denial, Suspension and Revocation of Licenses.] sets forth a lengthy list of specific grounds for suspension or revocation of a license; it provides a detailed procedure for appealing from adverse licensing decisions; it permits the commissioner to summarily suspend a license prior to a hearing necessary to prevent immediate and substantial public harm,

A. 65

EXHIBIT

B

it gives the commissioner the power, in addition to his license revocation power, to assess penalties of up to \$10,000 for violation of the law.

Section 8 [Responsibility of Dealers.] makes dealers responsible for the actions of their employees; requires them to give the commissioner the names and addresses of employees and to notify him of any changes in their employment status; and prohibits salespeople from working for more than one dealer during the same time period.

Section 9 [Duties.] requires dealers to permit parties to a brokered sales transaction to be present at the closing of the transaction. Additionally, if a dealer at the closing purports to have the authority to act on behalf of a party who is not present, he must present a written document exhibiting that authority.

Section 10 [Prohibitions.] requires dealers and manufacturers to display their licenses prominently on the business premises. This section also prohibits entirely the use by dealers of "net listing agreements". While current law also generally prohibits net listing agreements, they are permitted in those cases where the dealer guarantees to buy the home at a specific price in the event the home is not otherwise sold within a specified time period. The bill would eliminate this "guaranteed buy-out" option.

Section 11 [Rulemaking.] gives the commissioner the authority to promulgate reasonably necessary rules.

Section 12 [Recourse to the Bond.] limits recourse to the dealer's bond to consumer claimants. It also sets up a procedure for refereeing multiple claims against the bond in those cases where the commissioner reasonably believes that the claims will exceed the amount of bond proceeds available.

Section 14 [Temporary Surcharge.] imposes a one-time \$30 surcharge on license and license renewal applications for the purpose of initially funding the commissioner's new administrative duties under this bill.

Section 16 [Effective Date.] makes Article I effective on August 1, 1982, but permits currently-licensed manufacturers and dealers to operate under their old licenses until January 1, 1982 so as to coordinate their license renewal dates with the renewal scheme of the new law.

Article II: Manufactured Home Park Lot Rentals

Article II of S. F. No. 1918 deals with the rights and duties of manufactured park owners and park residents, and makes the following major changes to the existing law:

Section 1 [Findings; Policy.] contains a statement of legislative purpose and policy. It underscores the unique landlord-tenant relationship between park owners and residents, and sets forth certain general policy directives to be used by those who live under and interpret the statute.

Section 2 [Definitions.] defines terms, including the terms "reasonable rule" and "substantial modification." These terms are used in current law without definition and have been criticized by many as being too vague.

Section 3 [Rental Agreements.] contains a new requirement that the rental agreement must include a written description of the park's policy regarding the rights and duties of a resident who wishes to sell his home within the park. Requires written notice by the park owner to the residents of rule changes. Requires public posting of a notice describing park residents' rights and responsibilities.

Section 4 [Rent; Permissible Fees.] requires rents to be uniform throughout the park and prevents the charging of certain special fees in addition to rent, such as fees based on the number of people living in the home, the number or age of children living in the home, the number of guests, or the type of personal property (i.e., washers and dryers) located in the home. A park owner may charge an additional fee for pets, but the fee may not exceed \$4 per pet, per month. This section does permit the charging of higher rents to particular residents due to the larger size, or location of the lot or due to special facilities accorded to them. This subdivision does not, however, prohibit a park owner from abating the rent of a particular resident with special needs. It also permits park owners to charge a fee for doing maintenance work which is the resident's responsibility but which the resident has failed to do upon request.

Section 5 [New Construction Entrance Fees.] permits park owners who build new parks or new lots within existing park to charge residents an entrance fee of up to 10 percent of the park's construction costs in order to encourage the development of new park space. If the park owner ceases to operate the park within 15 years of the time that the entrance fee is paid, the fee must be repaid with interest to the existing resident.

Section 6 [Utility Charges.] regulates utility charges by a park owner. Prohibits a park owner from making a profit on the "pass through" of utility charges to residents.

Section 7 [Unreasonable Rules Prohibited.] prohibits the adoption and enforcement of unreasonable rules, and sets forth a list of rules that are presumptively unreasonable, including:

- (a) rules forbidding "for sale" signs;
- (b) rules requiring that goods or services be purchased from a particular seller; and
- (c) rules requiring the use of a particular broker or dealer in an in park sale.

Section 7 provides that other particular rules may be found unreasonable by a court in view of the definition of "reasonable rule" in section 2. Finally, section 7 expressly permits park owners to adopt reasonable rules placing maximum limits on the number of occupants permitted to reside in a home within the park.

Section 8 [Rent Increases.] requires rent increases to be reasonable; limits the maximum number of annual increases to two; and disallows rent increases the purpose of which is to pay a park owner's civil or criminal penalty.

Section 9 [In Park Sales.] restates the current law's guarantee of a resident's right to sell his home within the park if it is less than 15 years old, but limits the application of the "15-year rule" to homes built prior to June 15, 1976 (the date the HUD building code became effective). Section 9 also requires the park's "in park sale" criteria and procedures to be reasonable; it permits the park owner to inquire into a prospective buyer's creditworthiness and ability to meet rental obligations; and if the park owner refuses to accept the buyer as a resident, he must give a written explanation of his reasons upon request.

Section 10 [Termination.] restates the various "for cause" eviction grounds contained in current law, but eliminates the one remaining "no cause" ground for eviction; i.e., the expiration of a lease of one year or longer. In the case of evictions due to the closing of the park, the amount of advance notice that the park owner must give residents is extended from six to nine months. Further, where residents are evicted due to either park closings or improvements, they must be allowed to relocate to another comparable lot in the park, where available.

Section 11 [Eviction Defenses.] enumerates the defenses a resident may raise to an action for eviction.

Energy and Housing Committee
Page 5
February 15, 1982

Section 12 [Eviction Procedure.] sets up the eviction procedure to be followed in cases where good cause for eviction exists.

Section 13 [Retaliatory Conduct Prohibited.] restates current law by prohibiting retaliatory conduct by a park owner against a resident who complains to government officials about park violations, but extends the law by also forbidding retaliatory conduct due to a resident's complaint to the park owner.

Section 14 [Freedom of Expression.] guarantees park residents the right of freedom of expression within the park, including the right to assemble, canvass and leaflet, subject to reasonable time, place and manner restrictions.

Section 17 [Discrimination.] creates an exception to child discrimination ban of the human rights act and permits parks to elect to be seniors-only, or to contain adult-only or family-only sections.

Section 19 [Tenants' Remedies.] expressly extends the tenants' remedies act to cover park residents.

Section 22 [Effective Date.] makes Article II effective August 1, 1982, except that an immediate effective date is given to the preamble section, the "new construction" entrance fee section, the section which eliminates "no cause" eviction, and the sections which amend the human rights act and tenants remedies act.

Article III: Miscellaneous Provisions

Article III makes the following important changes to several additional laws relating to manufactured home regulation.

[Titling procedure.]

Section 1 retains the responsibility for titling manufactured homes with the registrar of motor vehicles, but requires all forms, rules and procedures to refer to the home as a manufactured home and not as a vehicle.

Section 2 creates a procedure for replacing a manufactured home's title with a normal real estate title in cases where the home has become permanently affixed to real estate.

[Regulation of health and safety matters within parks.]

Section 5 requires the attendant or caretaker of larger parks (e.g., 50 lots or more) to be readily available to the residents at all times in case of emergency.

Section 5 also requires parks and the municipalities in which they are located to develop plans for the sheltering or safe evacuation of residents in times of severe weather, and to post the plans conspicuously throughout the park.

Section 6 permits private individuals to sue over violations of the manufactured home park health and safety law. Present law has been interpreted by at least one court to preclude enforcement by any party other than the health department.

Section 7 permits municipalities to enforce safety ordinances within park boundaries even though the parks may constitute private property.

Section 8 permits municipalities to enforce the state-wide ten mph speed limit within parks or to enact local speed limits of up to 30 mph.

[Repossession procedures.]

Sections 10 to 13 clarify the procedure to be followed by secured parties in repossessing a manufactured home, particularly where the home has become permanently affixed to real estate.

Sections 1 to 4 of Article III would be effective August 1, 1982. Section 5 would be effective January 1, 1983.

GENE MERRIAM
Senator 37th District
2924 116th Avenue N.W.
Coon Rapids, Minnesota 55433
Room 24, State Capitol
St. Paul, Minnesota 55155
Phone: 296-4154

Senate

State of Minnesota

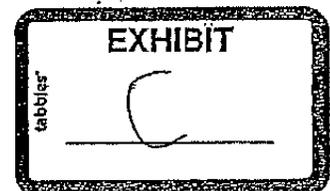
GENERAL BACKGROUND

Senate File No. 1918 concerns manufactured (commonly known as "mobile") homes. This type of home has become a major source of permanent, private housing in Minnesota. In most of the state, local zoning ordinances require the owners of these homes to install them in state-licensed manufactured housing parks. Minnesota has more than 800 state-licensed parks, which contain more than 50,000 private households.

Once installed in a park, manufactured homes are rarely relocated. Relocation costs are substantial, and in many areas of the state no vacancies exist in parks.

The owner of a manufactured home therefore has an unusual legal status. He or she is a private home owner - often with a 15-year mortgage - who pays ground rent. A new manufactured home can cost \$30,000, but its use and enjoyment depend on its owner's ability to continue to rent someone else's land.

The manufactured home park owner also has an unusual status. Not simply a private land owner or an ordinary landlord, the park owner has come to resemble a private government. Park rules control a wide spectrum of resident conduct, ranging from the length that grass may be allowed to grow, to whether a homemaker can earn some extra income by babysitting neighborhood children, to how many people can live in each private home. In short, a park owner is like an unelected mayor of a bedroom community.



LEGISLATIVE BACKGROUND

The legislature first recognized the special nature of manufactured home parks in 1973 and created a special law to govern landlord-tenant relations in those parks. In 1979, the legislature heard lengthy testimony which documented major abuses of power occurring through this form of private government. Responding to that testimony, the legislature substantially amended the special landlord-tenant law. The 1979 amendments:

1. Required that all park rules be reasonable. [In a lawsuit based on this part of the law, the Attorney General has successfully sued a park owner who required the home owners in his park to register with him their overnight guests.]
2. Prohibited substantial modification of pre-existing leases. [This provision protects against major and unilateral changes in "the rules of the game." The Attorney General has used this provision to prevent a park from discontinuing fuel oil service to its residents in the middle of the winter.]
3. The right of a resident to sell his or her home within the park was clarified and strengthened. [If a home must be removed from a park upon sale, the value of the home (and the seller's investment) drops by 30 percent or more. The 1979 amendments gave the resident the right to an in-park sale, while allowing the park to approve the buyer.]
4. No-cause eviction was severely limited. [Since the value of these private homes depends on access to rented land, the legislature chose to limit park owners to a list of specified causes as a basis for eviction.]

Although the 1979 amendments made major improvements in the law, the changes nonetheless left major problems:

1. No-cause eviction still occurs. Residents with year-long leases can be evicted at the end of the lease, even if they have paid their rent on time and have obeyed all park rules. And, in a recent decision, the State Supreme Court declared that all residents of manufactured home parks are on such leases. According to the Court's decision, on May 29, 1982, more than 50,000 households will be subject to no-cause eviction.
2. Key terms were left undefined. For example, the law requires rules to be "reasonable," but contains no definition of that key word. The law also contains no explanation of what constitutes a "substantial modification" of a pre-existing lease.

HISTORY OF SENATE FILE NO. 1918

This legislation grew out of an interim study conducted by the House Subcommittee on Housing. That interim study, suggested jointly by the Attorney General's Office and the Minnesota Manufactured Housing Association, included five hearings around the state, in Blaine, Rosemount, St. Peter, Thief River Falls and Duluth. Five hundred citizens attended in Blaine; 300 in Rosemount. The particular provisions of the legislation reflect the concerns voiced by citizens in more than 15 hours of public testimony.

On January 28, 1982, the House Subcommittee on Housing took six and one-half hours of testimony on House File No. 1668, the companion bill. The Subcommittee heard both proponents and opponents and then endorsed the bill unanimously. On February 4, 1982, the full House Committee on General Legislation and Veteran's Affairs endorsed the bill, also without a single opposing vote. House File No. 1668 had its second reading in the House on February 11, 1982. Final action is expected on Monday, February 15, 1982.

KEY FEATURES OF ARTICLE II

A plain language pamphlet describing the current law is attached. A detailed summary of Article II is included in the bill summary. Highlighted below are five key aspects of Article II:

1. Vague and general language is clarified and made more specific. Terms are defined. Implicit powers or duties are made explicit. This change has two purposes: to enable the people involved to know the rules of the game; to allow the Attorney General's Office to intervene less often.
2. No-cause eviction is eliminated. Residents would have a right to keep their homes in the park perpetually, so long as the residents behave themselves and the park remains in operation.
3. For-cause eviction is made more efficient. Unfair and technical defenses to for-cause eviction are restricted. Terms and procedures are better defined, so that a park owner with proper cause can obtain the remedy of eviction more promptly.
4. Rents will be required to be uniform within a park, varying only for lots with special advantages or in cases of residents with special needs. Some park owners had been surcharging for pets, washing machines, "extra" people in private homes, for children, etc. One park charges \$50 per month extra when a child in a household turns 18.
5. In-park sale rights are clarified. An owner of a home located in a park has the right under current law to sell that home in the park. The park has the right to approve the buyer as a new tenant. The current law addresses this complicated relationship only with vague terms. The bill brings some clarity to the relationship.

FURTHER YOUR AFFLIANT SAITH NOT.

Valerie Sims
Valerie Sims

Subscribed and sworn to before me
this *20th* day of *June*, 2004.

Sharon Sandberg
Notary Public

Do#: 223407



STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

All Parks Alliance for Change,
a Minnesota non-profit organization,

Plaintiff,

vs.

Unipro Manufacturing Housing Communities
Income Fund, d/b/a Ardmore Village,

Defendant.

Court File No. C4-04-6504
Case Type: Civil/Other

DEFENDANT'S ANSWERS TO
PLAINTIFF'S INTERROGATORIES
AND
REQUEST FOR PRODUCTION OF
DOCUMENTS, SET I

TO: THE ABOVE-NAMED PLAINTIFF AND THEIR ATTORNEY VALERIE SIMS, ESQ.,
LOMMEN, NELSON, COLE & STAGEBERG, P.A., 2000 IDS CENTER, 80 SOUTH
EIGHTH STREET, MINNEAPOLIS, MN 55402:

Defendant, for its responses to the Plaintiff's Interrogatories, states and alleges as follows:

INTRODUCTION

The information supplied in these answers is not based solely on the knowledge of the Defendant, but includes the knowledge of the party's attorneys, unless privileged or protected by the Work Product Doctrine. The word usage and sentence structure is that of the attorneys who prepared these answers and does not purport to be the exact language of the Defendant. The responses set forth herein are based on information currently known by the Defendant and its attorneys. Discovery in this case is ongoing, and the Defendant has not completed its investigation of the facts pertaining to this action. The Defendant reserves the right to supplement or modify its answers should any additional or different information become available through discovery or otherwise. Such



supplementation shall be in accordance with the obligations set forth in Minn. R. Civ. P. 26.05, and the Defendant assumes no other obligations regarding supplementation of responses. To the extent that a response to a discovery request requires the examination of numerous documents and the preparation of summaries of information contained therein, which information cannot be provided by the Defendant with substantially greater facility than could otherwise be obtained by the propounding party, the Defendant reserves the right to respond by producing documents from which the propounding party may ascertain the information requested.

GENERAL OBJECTIONS

1. Defendant objects to these discovery requests to the extent that they seek documents and information that is not relevant to the subject matter of this action or that is neither admissible in evidence nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that Defendant answers these discovery requests, he does not concede the information requested is relevant to nor admissible in this action. Defendant expressly reserves the right to object to further discovery into the subject matter of any of these discovery requests.

2. Defendant objects to these discovery requests to the extent they seek information that is privileged by the attorney/client privilege, work product immunity, or other applicable privilege.

3. Defendant objects to these discovery requests to the extent they seek information that is not within its knowledge; to the extent they seek discovery that is unreasonably cumulative or duplicative; obtainable from some other source that is more convenient, less burdensome, less expensive; or is unduly burdensome or expensive; and to the extent they may otherwise be construed to require responses beyond those required by the Rules of Civil Procedure.

4. Defendant objects to these discovery requests to the extent they are vague, ambiguous, over broad, premature, or presented in multiple form, and thus not susceptible of an answer at this time.

5. Defendant objects to the definitions supplied by propounding party in the discovery requests.

6. Many of the document requests and interrogatories propounded by Defendant call for "all" documents, facts or evidence relating to particular topics. The information and documents Defendant produces in response to these discovery requests represent the information, evidence, and/or documents in its possession or control.

7. The interrogatories propounded by Defendant are compound and multiple and therefore exceed the maximum amount of interrogatories permitted by the Rules of Civil Procedure. Accordingly, no response to the excessive interrogatories is required.

Subject to and without waiving the foregoing general objections, Defendant responds as follows to the Interrogatories propounded by Plaintiff:

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify each person whom you intend to call as a witness to testify at the trial of this lawsuit.

ANSWER: Defendant has not determined who will be called to testify at trial.

INTERROGATORY NO. 2: Identify each person known to you to have personal knowledge of any of the facts or issues you believe to be involved in this lawsuit.

ANSWER: Mary McGaffey, Douglas McGaffey, Thomas DeVincke, John F. Bonner, Christopher Anderson, Valerie Sims, Jim Paist, Ned Moore, Amanda Jackson, Jess Luce, Thomas White, and Barry O'Neil.

INTERROGATORY NO. 3: Identify each person interviewed by on behalf of you or your counsel or from whom you or your counsel obtained a statement regarding any of the facts or issues involved in this lawsuit.

ANSWER: None.

INTERROGATORY NO. 4: Describe the substance of the personal knowledge of the facts or issues involved in the lawsuit of each person identified by you in your responses to Interrogatory Nos. 1, 2 and 3 herein.

ANSWER: Objection. The interrogatory as phrased seeks information protected from disclosure by the work product doctrine and attorney-client privilege. Subject to and without waiving said objection, Defendant has no knowledge regarding the personal knowledge of Barry O'Neil, Valerie Sims, Jim Paist, Ned Moore, Amanda Jackson, Jess Luce, and Thomas White. John F. Bonner and Thomas DeVincke has knowledge of the legal claims and defenses at issue in this lawsuit. Mary McGaffey and Douglas McGaffey have knowledge regarding Ardmor Village's policy with respect to door-to-door solicitation in the Ardmor Village community. Christopher Anderson has general knowledge regarding the operation of Ardmor Village.

INTERROGATORY NO. 5: Identify each document and/or thing that you may offer into evidence at the trial of this lawsuit.

ANSWER: Defendant has not yet determined what document and/or things it will offer into evidence at the trial of this lawsuit.

INTERROGATORY NO. 6: Identify each document that you believe to be relevant to any of the facts and issues in this lawsuit.

ANSWER: Objection. The interrogatory as phrased seeks information protected from disclosure by the work product doctrine. Further, the interrogatory is overly broad, unduly burdensome and vague.

INTERROGATORY NO. 7: Identify each person you expect to call as an expert witness at the trial of this lawsuit.

ANSWER: None.

INTERROGATORY NO. 8: With respect to each person identified by you in response to Interrogatory No. 7, state the following:

- (a) The subject matter on which each such person is expected to testify;
- (b) The substance of the facts and opinions to which each such person is expected to testify; and
- (c) A summary of the grounds for each opinion identified in (b) above.

ANSWER: See Answer to Interrogatory No. 7.

INTERROGATORY NO. 9: Identify each and every communication between you and APAC, its agents or employees relating in any way to the facts and allegations in this lawsuit.

ANSWER: Defendant remains in the process of gathering information responsive to Interrogatory No. 9, and this response will be supplemented in accordance with the rules of civil procedure.

INTERROGATORY NO. 10: Identify and describe the rule, policy and/or regulation which prohibits canvassing, leafletting, and/or door-to-door solicitation on the Ardmore premises, and provide the date such rule, regulation, or policy was adopted.

ANSWER: There is no rule or regulation that prohibits canvassing or leafletting within Ardmore Village. These activities are permitted in the Ardmore Village community. It was formerly the policy of Ardmore Village that these activities not be conducted by means of door-to-door home site visits, but rather through distribution and/or publication of information at the Ardmore Village community center. Ardmore Village does have a rule entitled "Business Activities" that provides: "Peddling, soliciting or conducting any commercial enterprise or profession, by a Resident anywhere within the Community is not permitted." This rule has been in effect since September 2002. A nearly identical rule was in effect as of August 1994.

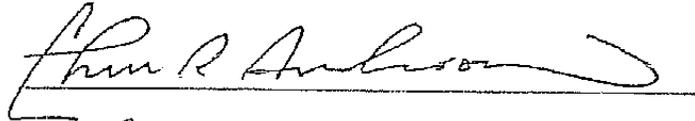
INTERROGATORY NO. 11: Fully describe the reasons Uniprop adopted the rule, policy and/or regulation which prohibits canvassing, leafletting, and/or door-to-door solicitation on the Ardmore premises, and identify all documents, correspondence, and/or board minutes that would reflect the consideration and/or factual basis for such reasons.

ANSWER: See Answer to Interrogatory No. 10. There is no rule that prohibits canvassing or leafletting. These activities are permitted within the Ardmore Village community. Business activities such as solicitation and peddling are prohibited within the Ardmore Village community. These activities are prohibited by Ardmore Village in order to promote the residents' peaceful enjoyment of the community. Ardmore Village formerly had a policy of prohibiting door to door solicitation, leafletting and canvassing for this same reason.

INTERROGATORY NO. 12: Identify all persons who provided information in the compilation of your answers to these interrogatories and all persons who provided documents in response to the requests for production of documents below.

ANSWER: Mary McGaffey, a current manager of Ardmor Village, Thomas DeVincke, Defendant's legal counsel, and Christopher Anderson, a Unipro regional manager.

Unipro Manufactured Housing Communities Income Fund, d/b/a Ardmor Village,



By: CHRIS R. ANDERSON

Its: REGIONAL SUPERVISOR

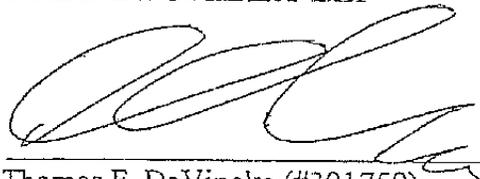
Subscribed and sworn to before me
this ____ day of _____, 2004

Notary Public

AS TO OBJECTIONS:

Dated: June 28, 2004.

BONNER & BORHART LLP

By 
Thomas F. DeVincke (#301759)

Suite 1750
220 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 313-0711
*Attorneys for Unipro Manufactured Housing
Communities Income Fund, d/b/a Ardmor Village*

DOCUMENT REQUESTS

REQUEST NO. 1: Produce all documents identified or described in any of your answers to the Interrogatories set forth above.

RESPONSE: Responsive documents will be produced at a mutually agreeable time and place.

REQUEST NO. 2: Produce all documents that you relied upon in preparing answers to the Interrogatories set forth above.

RESPONSE: Responsive documents will be produced at a mutually agreeable time and place.

REQUEST NO. 3: All Rules and Regulations for Ardmor Village from January 1, 2000 to the present.

RESPONSE: Responsive documents will be produced at a mutually agreeable time and place.

REQUEST NO. 4: Produce all documents that you intend to use as exhibits at the trial of this lawsuit.

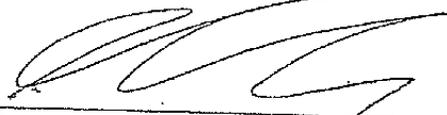
RESPONSE: Defendant has not determined what documents will be used as exhibits at trial. Any documents that will be used at trial will be disclosed in accordance with the Court's scheduling and pre-trial order.

REQUEST NO. 5: Produce all documents you intend to introduce or use in any manner as evidence at the trial of this lawsuit.

RESPONSE: Defendant has not determined what documents will be introduced as evidence at trial. Any documents that will be introduced as evidence at trial will be disclosed in accordance with the Court's scheduling and pre-trial order.

Dated: July 26, 2004.

BONNER & BORHART LLP

By 

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*Attorneys for Uniprop Manufactured Housing
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