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IN THE SUPREME COURT OF THE STATE OF DELAWARE

SANDHILL ACRES MHC, Respondent Below, Appellant, v. SANDHILL ACRES HOME OWNERS ASSOCIATION, Petitioner Below, Appellee.	))))))))))	Case No. 525,2018 UPON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN C.A. NO. S17A-08-001 ESB

CORRECTED BRIEF OF FIRST STATE MANUFACTURED HOUSING ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT BELOW, APPELLANT AND REVERSAL

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Rules

STATEMENT OF INTEREST

First State Manufactured Housing Association ("FSMHA") as proposed *Amicus Curiae*, submits this brief in support of Appellant, Sandhill Acres MHC, LLC ("Sandhill Acres"), to urge the reversal of the Superior Court's September 18, 2018 letter Order reversing the arbitrator's decision approving the rent increase for manufactured housing lots in the community of Sandhill Acres, *Sandhill Acres Home Owners Association v. Sandhill Acres MHC, LLC*, C.A. No. S17A-08-001 (Del. Super. Sept. 13, 2018) (the "Order").

The primary issue on appeal, and which is vitally important to FSMHA and the manufactured housing community owners that it represents, is what is the proof which must be shown for a manufactured housing community owner which wishes to meet its obligations under 25 *Del. C.* § 7042(a)(2). In particular, FSMHA believes that this Court's currently articulated standard, that an investment expense a community owner makes in its community, which **improves** the community, satisfies the "modest" showing needed, under 25 *Del. C.* § 7042(a)(2), for the requirement that the rent increase be directly related to operating, maintaining or improving the community, and allows the community owner to move on in the arbitration to show that its rent increase is justified under one or more of the factors set forth in under 25 *Del. C.* § 7042(c).

FSMHA urges the reversal of the Order because the new standard which the Court below adopts is inconsistent with the Rent Justification Act, 25 *Del. C.* § 7040, *et seq.*, the thorough and well-reasoned decisions of this Court in *Bon Ayre Land, LLC, v. Bon Ayre Community Association*, 149 A.3d 227 (Del. 2016) ("*Bon Ayre II*") and *Donovan Smith HOA v. Donovan Smith MHP, LLC*, 2018 Del. LEXIS 325 (Del. July 10, 2018) ("*Donovan Smith*"), and imposes new burdens not otherwise contemplated by the Act or this Court in construing the Act.[1]

FSMHA has a great interest in this issue on appeal because the decision of the Court below, in contravention of this Court's clear guidance, directly and negatively impacts the ability of FSMHA's members, manufactured housing community owners throughout Delaware, to seek increases in rent for the leasehold use of their property. FSMHA has been, for the over twenty years, the sole legislative, regulatory and educational voice of manufactured housing communities and the factory-built housing industry in this State. and FSMHA believes that its position, which reflects industry's perspective, will be helpful to the Court as it again considers this very important "door opener" provision.

[1] Should the Court conclude that the Court below did not articulate a new standard inconsistent with Section 7042(a)(2) or this Court's interpretations of the standard required to meet such Section, FSMHA further believes, as discussed *infra*, that the Court below erred in then applying that standard to the facts of record, without first allowing the arbitrator to do so, thus contravening 25 *Del. C.* § 7044.

Pursuant to Delaware Supreme Court Rule 28(b), FSMHA has contemporaneously filed a motion for leave to file this *Amicus Curia* brief. FSMHA provided a substantive copy of its Opening Brief to counsel for Appellant and Appellee. Appellant Sand Hill has consented to intervention. Appellee Sand Hill Acres Home Owners Association (the "HOA") has not.

ARGUMENT

I. THE SUPERIOR COURT ERRED IN FINDING THAT APPELLANT FAILED TO MEET ITS OBLIGATIONS UNDER 25 *Del. C.* § 7042(a)(2).

A. Question Presented.

Whether a community owner which incurs costs in investing in its community on matters which improve the manufactured housing community, satisfies the "modest" showing needed for the requirement, under 25 *Del. C.* § 7042(a)(2), that the rent increase be directly related to operating, maintaining or improving the community, thereby allowing the community owner to show in an arbitration under the Act that its rent increase is justified under the factors set forth in under 25 *Del. C.* § 7042(c).

B. Scope of Review.

The issue presented in this appeal is one of statutory construction and interpretation, which is subject to *de novo* review by this Court. *Bon Ayre II*, 149 A.3d at 233.

C. Merits of the Argument.

1. The Arbitrator had a Rational Basis to Conclude that Sandhill had satisfied its "modest" burden of showing, under 25 *Del. C.* § 7042(a)(2), that its rent increase was directly related to operating, maintaining or improving the Manufactured Housing Community, and the Superior Court's Conclusion Otherwise was in Error.

The arbitrator's decision attached hereto as Exhibit A, concluding that the proposed rent increase met the requirements under 25 *Del. C.* § 7042(a)(2), was sound and well-reasoned, and, because it was based on substantial expenses proven to have been incurred for an investment that improved the community (Exhibit A, p. 6), that conclusion was rationally based. *See Donovan Smith*, at *5 (Arbitrator, in considering a community owner's investment, had a "rational basis" to reach his finding that the community owner's return had declined because of the increased cost incurred in making that investment). That decision was required to be affirmed by the Superior Court.

The Superior Court, however, concluded that the Arbitrator applied the wrong legal standard (Order, p. 11), then, rather than remanding the matter back to the Arbitrator, the Superior Court compounded its error and went beyond its statutory authority, applying the standard it believed to be correct to the facts which the Arbitrator had not considered in light of that standard and concluding that Sandhill had not met its burden of justifying the rent increase. *Id*., p. 13. The Superior Court's Order must be reversed.

The Arbitrator, James Sharp, Esquire, applied the correct legal standard, as well as the facts to such legal standard, and, as a result, the Arbitrator's decision must be upheld.

This Court, in two separate decisions, has been quite clear about the requirements that must be shown for a community owner to meet its burden under Section 7042(a)(2). In particular, this Court has confirmed that in order to show the increase is directly related to operating, maintaining or improving the community, the community owner must show (i) that its costs have gone up in operating or maintaining the community, **or** (ii) that it has incurred costs in an investment improving the community. Specifically, this Court held that:

> If a landowner can show that its costs have gone up, that opens the door to a rent increase based on §7042(c)'s factors, including market rent. If a landowner invests in its development, and therefore has "improve[d]" the community, it can **also** reap the reward from that investment through higher-than-inflation rent increase.

Bon Ayre II, at 235 (*citing* 25 *Del. C.* § 7042(a)(2)) (emphasis added).

In so holding, this Court made it clear that "[t]his statutory requirement is a **modest** one, which only requires the landowner to produce evidence **suggesting** that the 'return' on its 'property' has declined." *Bon Ayre II*, at 235-36 (emphasis added); *Donovan Smith*, at *3, n. 15. Once this modest burden of showing "that its original expected return has declined, because the cost side of its ledger has grown," this "opens the door to a rent increase based on § 7042(c)'s factors, including market rent." *Bon Ayre II*, at 234-35; *Donovan Smith*, at *1.

FSMHA believes that this Court's articulation of this standard is correct, and should, **for the third time**, be confirmed as the appropriate standard applied in

connection with any Section 7042(a)(2) analysis by an arbitrator, or the Superior Court considering any appeal from an arbitrator's decision.

Furthermore, FSMHA urges the Court, with respect to a community owner who chooses to make an investment in its property that improves the community, to uphold its decision in *Donovan Smith* in which it held that once the cost of the investment is shown by appropriate proof at the arbitration, the arbitrator can appropriately conclude, and has a rational basis to conclude, that that the community owner's "costs had increased in a manner that satisfied § 7042(a)(2)…." *Donovan Smith*, at *1.

In *Donovan Smith*, this Court recognized that where costs are incurred for a community's owner's investment in its community, the arbitrator can fairly infer that the community owner's rate of return has declined. There, proof was offered that improvements in the community were made – driveways were added to the lots and the maintenance building was painted. *Donovan Smith*, at *2.

Recognizing that the arbitrator is "charged with addressing the evidence and making fair inferences from it," this Court concluded that, based on the record, one "fair inference is that adding a driveway to each unit involved **a substantial cost**, and that repainting the maintenance building also involved **a cost**, and that without an increase in rent, **the Landowner's rate of return would have been reduced**." *Donovan Smith*, at *2 (emphasis added). This Court then held that the arbitrator had

a "rational basis to reach his finding that the Landowner's **return had declined** because of its **increased cost** of adding a driveway to each unit and repainting the maintenance building." *Id.*, at *5 (emphasis added).

This Court's holding in *Donovan Smith* is correct, and FSMHA urges the Court to continue to conclude that arbitrators have a rational basis to conclude that where investment expenses are incurred to improve a community, that such investment has a negative effect on the community owner's return, and that, alone, is enough to open the door to a rent increase based on Section 7042(c)'s factors.

This Court's holding in *Donovan Smith* is certainly amply supported. Indeed, there is, of course, an obvious and inherent connection between expending funds for an investment in the community which improves it and the fiscal "bottom line" of a community owner following such expense. If a community owner spends its money investing in the community, the expected return, no matter what the results are for the community, will be less than previously expected. This is so because the funds spent on the investment, funds that would have originally been included in the year end finances, are funds that are no longer able to be included in the bottom line results of the community owner.

By incurring significant costs in making the investment in the community which improves the manufactured housing community, the community owner has thereby suffered a **decrease** in its expected return, a decrease that can be measured

by an amount **no less than** the full cost the community owner invested in that community. There is, in these circumstances, no substantive additional evidence needed, nor is an actual year-end financial statement required to prove at the arbitration the effect of the sunken cost of an improvement investment on the expected return of the party making the investment.

Accordingly, when a community owner "invests in its development" by incurring significant costs in making threshold improvements in the community, FSMHA believes that this Court's already recognized position in *Donovan Smith* is definitive on this point, and that such owner meets this Court's **modest** showing requirement because the community owner has, indeed, produced "evidence **suggesting** that the 'return' on its 'property' has declined." *Bon Ayre II*, at 235-36 (emphasis added). This is an intuitively obvious, bottom line loss to the expected return, and one which an arbitrator, and the Court considering the arbitrator's decision, can either infer, as this Court did in *Donovan Smith*, or take judicial notice of in making the required determination under Section 7042(a)(2).

Notwithstanding the clear implication of *Donovan Smith*, and against that clear evidence that the Arbitrator had a "rational basis" for his conclusion that it seemed "clear to [him] that the Landlord has cleared the first hurdle of 25 Del. C. § 7042(a)(2), by demonstrating that the propose rent increase is related to operating,

maintain, or improving Sandhill Acres" (Exhibit A, p. 8),[2] the Court below imposed an obligation nowhere found in *Bon Ayre II*, and directly inconsistent with *Donovan Smith*, finding that "[i]n order for Sandhill to justify an increase to market rent for its existing tenants it would have had to offer evidence about its original costs and original expected return and how the expenditure of $12,185 altered that relationship." Order, p. 11-12. Yet, as discussed above, the Superior Court's finding contradicts *Donovan Smith*.

The Court below required something other than that which the Act and this Court requires in terms of showing the costs for an investment in the community and its impact on an owner's expected return on the property. That newly imposed requirement is simply incompatible with *Bon Ayre II* and *Donovan Smith*. As in *Donovan Smith*, the arbitrator can, especially where evidence of the investment costs were incurred for an improvement in the community are demonstrated, as they were here, take notice, and is permitted, as a matter of law, to conclude that such incurred investment cost suggests "that the 'return' on [the community owner's] 'property'

[2] The Arbitrator specifically noted that the community owner actually incurred **costs**, the amount of which it introduced into evidence as the actual expenses incurred by Sandhill for the installation of the new water filtration system to benefit Sandhill Acres, and he further noted that such costs were an investment, a cost of improvement in the community, finding that the record included evidence that the community had water quality issues before the installation of the system, and "that the water filtration system was clearly a benefit to the community and the cost thereof is related to improving Sandhill Acres." Exhibit A, p. 6.

has declined." *Bon Ayre II*, at 235-36 (emphasis added); *Donovan Smith*, at **2, 5. The failure of the Court below to understand the intuitively obvious consequences of an **investment expense** on the bottom line of the community owner, and allow the arbitrator to have a "rational basis" to rely on it -- a situation fully understood and applied by this Court in *Donovan Smith*, as discussed above -- was in error.

Accordingly, FSMHA urges this Court to uphold its ruling in *Donovan Smith* and confirm that where a community owner invests in its community, and shows, by appropriate proof at the arbitration, that the investment costs were incurred and that such investment improves the community, the arbitrator can appropriately conclude, as he did here, that that the community owner's costs had increased in a manner that satisfies Section 7042(a)(2).

2. The Rent Justification Act does not require a Community Owner to Produce Evidence to Showing a Year over Year Overall Loss in Order to Satisfy 25 *Del. C.* § 7042(a)(2).

FSMHA further urges this Court to maintain its well-reasoned position on what must be shown to satisfy Section 7042(a)(2), and to reject any interpretation of the Act that would require a community owner produce its financial statements, including profit and loss statements, to show that its "profits" have decreased, year over year, in order to fulfill the requirements of Section 7042(a)(2).[3]

[3] The HOA argued below that such a showing was required. FSMHA, on behalf of Delaware's manufactured home community owners, asks this Court to reject any change in the Court's prior rulings, and announce for all future arbitrations that such

Specifically, FSMHA respectfully requests that this Court, in order to remove any remaining doubt about this issue, find that a community owner's burden of proof under that Section does not require, at any point in the rent justification process under the Act, the production of evidence, including year over year profit and loss statements, for the purpose of showing that a community owner's overall "profits" are down in the then current year because its expenses are up.

It is certain that the Act nowhere requires proof, prior to seeking a rent increase above CPI-U, that a community owner "open its books," disclose full year over year financial statements, and show that overall "profits" decreased, year over year. Section 7042(a)(2) certainly doesn't require that, and no provision in the Act mandates an overall loss, year over year, is required to be shown as a door opener or otherwise.

To the contrary, the Act speaks in terms of costs and expenses, and nowhere within that Act does it address "profits" of the community owner. If such a showing of decreased expenses had been required by the Delaware General Assembly, the legislature certainly could have drafted a clear and concise statement demanding that a community owner make such showing of decreased overall profits before it proceeded to demonstrate a rent increase under Section 7042(c). Yet, because no

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a showing is not required, absent further action by the Delaware General Assembly requiring it.

such language is included in the Act, this Court should not now impose a threshold overall profit decrease prerequisite on community owners. The failure of the Act to so require such a prerequisite confirms that no such showing is required.

Just as significantly, however, is the fact that even though this Court has twice before been called on to interpret the requirements of Section 7042(a)(2), **neither** *Bon Ayre II* nor *Donovan Smith* supports an interpretation of the Act that would require community owners to provide profit and loss statements showing decreased overall "profits" to meet the requirements of Section 7042(a)(2).

To the contrary, *Donovan Smith* has already concluded that a showing of decreased "overall profits" as a door opener is not required. There, even though this Court had before it the argument that Section 7042(a)(2) required such an overall profit loss showing, this Court rejected it, and confirmed its cost-based focus as found in *Bon Ayre II,* a decision that does not mandate any overall profit decrease showing by a community owner. *Donovan Smith*, at *3 (Affirming the arbitrator's decision, and thereby rejecting the appellant's contention that the arbitrator erred because the community owner had not shown that "its profits were down because its costs were up….").[4]

[4]Indeed, in that case no financials were provided, but rather only an "inference" from the record in which the arbitrator could have concluded that driveways were added to each unit which "involved substantial cost," the repainting of the maintenance building "involved a cost," and that "without an increase in rent, the Landowner's rate of return would have been reduced." *Donovan Smith*, at *2.

Again, this Court's conclusions in *Bon Ayre II* and *Donovan Smith* are sound, and have correctly put the focus on that which is prominently discussed in the Act, costs. In *Bon Ayre II*, this Court correctly had a cost-based focus, referring multiple times to "costs" which ultimately culminated in the Court stating as follows: "If a landowner can show that its **costs** have gone up, **that opens the door to a rent increase based on §7042(c)'s factors, including market rent**." *Bon Ayre II*, at 234 (emphasis added).

Similarly, this Court's decision in *Donovan Smith*, makes clear that the focus remains on costs, with the adoption of the language in *Bon Ayre II* that "the landowner must show that its original expected return has declined, because the **cost** side of its ledger has grown. If a landowner can show that its **costs** have gone up, that opens the door to a rent increase based on § 7042(c)'s factors, including market rent." *Donovan Smith*, at **1-2 (Emphasis added) (*citing Bon Ayre II*, at 234-35).

That repeated focus on "costs" by this Court is, of course, attributable to the Act's specific focus on "costs" in Section 7042, which refers to costs. 25 *Del. C.* § 7042(c) ("Cost" or "costs" used five (5) times therein).[5] Nowhere are the terms "profit" or "net income" even mentioned. Accordingly, under this Court's clear

[5] Other than the market rent factor under Section 7042(c)(7), the entire Act can be fairly characterized as a "recoupment" statute, allowing for an increase in rent over CPI-U based on recapturing certain cost increases incurred by the community owner. 25 *Del. C.* § 7042 (c)(1) – (6), (8).

pronouncements in *Bon Ayre II* and *Donovan Smith*, a community owner's costs, not whatever his or her overall profits might be, are the touchstone for compliance with Section 7042(a)(2).

This Court's decisions in focusing on "costs," not "profits," and in not requiring proof of year over year loss in overall profits is, as discussed above, on sound footing. If the Court, contrary to the terms of the Act, did adopt a required showing of a year over year overall profit decrease, in order to open the door for the opportunity to seek a rent increase over CPI-U, such a newly installed requirement would create undue financial hardships, preclude that which the Act specifically mandates -- a "just, reasonable and fair return" for the community owner -- and, more significantly, raise grave constitutional concerns.

Thus, for example, a community owner who purchases a community will arguably **never** be able to raise the rent above CPI-U for the first two years of his or her ownership if this judicially imposed limitation were adopted as the earliest the overall profit decrease could be established would be, if at all, at the end of the second full year of his or her ownership of the community. Any overall profit limitation would thus eliminate any ability to achieve, at any time during those two years, the just, reasonable and fair return on his or her investment in the community that Act requires, and certainly counsels in favor of this Court's continued focus on costs, not overall profits.

Moreover, consider the situation in which a community owner in Year 1 has "profits" that met the community owner's "profit expectations," but that in Year 2, the community owner, for whatever reason, eschewed a rent increase over CPI-U in Year 2, a year when "profits" were down substantially over Year 1. Then suppose the community owner, in Year 3 wanted to increase rents, even though "profits" were marginally up in Year 3 over Year 2, but still far below the "expected" return that community owner last achieved in Year 1.

Such a judicially created standard would, in that circumstance, absolutely deprive the community owner of the ability in Year 3 to seek an increase, even though its "profits" are way down, and that owner's "expected return" has clearly declined. Such a judicially created limitation, if ever imposed, would also be an anathema to the homeowners because the community owner would, in that situation, be forced every time to seek a rent increase in Year 2, when he or she might not otherwise have done so.

Moreover, suppose the community owner simply could not increase rents in Year 2, for whatever reason (including absorbing the costs of the justification process which, as this Court knows, the Act prohibits from being passed along to the homeowners), then such owner would be, if the HOA's desired reading of the Act is adopted by this Court, absolutely precluded from a rent increase in Year 3, thereby depriving the community owner from the statutorily granted right to receive its "just,

reasonable and fair return" on its investment. 25 *Del. C.* § 7040. This again confirms the correctness of this Court's prior decisions in focusing on costs, rather than on profits.

And, such an interpretation, when considered in light of such facts -- facts that would doubtlessly arise if there were a sharp downturn in the economy after Year 1 and a sluggish recovery (a scenario that the Court well knows happens time and time again) -- suggests a serious constitutional concern whereby this property owner, even though profits are way down, but has marginally improving increased profits Year 3 over Year 2, has **no** ability to prove in Year 3 (and possibly in the years beyond based on how slow the economy recovers) a rent increase over CPI-U to ensure that its originally expected Year 1 return is possible. *See Bon Ayre II*, at 237("[T]he Superior Court's interpretation also raises constitutional due process concerns by subjecting landowners to restrictions on their property rights without a fair way to prove a relevant statutory factor that could ease the restriction.").[6]

In short, FSMHA urges this Court, as it did in *Donovan Smith*, to again reject imposing some type of year over year overall "profit decrease" requirement to open the door to a rent increase based on §7042(c)'s factors. FSMHA further asks the

[6] In this circumstance, the imposition of a judicially created "profits" based limitation on rent increases is worse than the judicial interpretation originally imposed by the Superior Court and overturned in *Bon Ayre II* as there might **never** be a way to increase rents if the economy never rebounds to the level it was in Year 1.

Court to specifically hold that evidence, including financial statements, showing a community owner's overall year over year profits and losses are not required in connection with the burden of proof a community owner must show under 25 *Del. C.* § 7042(a)(2).

II. IF THE SUPERIOR COURT'S DECISION CONCERNING THE APPLICABLE LEGAL STANDARD IS CORRECT, THE MATTER MUST BE REVERSED AND REMANDED TO THE ARBITRATOR TO MAKE THE REQUIRED FINDINGS UNDER 25 *Del. C.* § 7042(a)(2).

A. Question Presented.

Whether, upon a finding that an arbitrator applied the wrong legal standard, a matter must be remanded to the arbitrator to apply the facts to the appropriate legal standard because the Superior Court precluded from doing so under 25 *Del. C.* § 7044.

B. Scope of Review.

This issue, based on statutory interpretation, is subject to *de novo* review by this Court. *Bon Ayre II*, 149 A.3d at 233.

C. Merits of the Argument.

Should the Court, for whatever reason, conclude that the Court below correctly determined that the arbitrator applied the incorrect standard, FSMHA asks that this Court resolve the conflict between the Order and the Superior Court's other decision in *December Corporation v. Wild Meadows Home Owners Association*, C.A. No. K15-04-001 JJC (Del. Super. Ct. July 12, 2016) ("*December Corp.*").

FSMHA believes that *December Corp.* appropriately reflects the obligation of the Superior Court in an appeal under the Act, and FSMHA urges this Court to resolve this conflict between these decisions to provide guidance in future matters

in this area as FSMHA expects that this issue will recur. *See Bon Ayre II*, at 231 (Providing guidance on an issue "that is likely to recur before arbitrators and the Superior Court" under the Act.). FSMHA believes it is of upmost importance for community owners, the homeowners and the Courts to understand when the Superior Court, on an appeal from an arbitration, must remand a matter to the arbitrator for further proceedings.

In that regard, FSMHA believes that *December Corp.* was correctly decided, and requires that the Superior Court, where it finds that an arbitrator applies the incorrect legal standard, must remand a matter to the arbitrator to apply the facts to the appropriate legal standard because the Superior Court is precluded from doing so under 25 *Del. C.* § 7044.

The Superior Court's scope of review, on any appeal, is not *de novo,* but rather it is to determine "whether the record created in the arbitration is sufficient justification for the arbitrator's decisions and whether those decisions are free from legal error." 25 *Del. C.* § 7044. Should this Court decide that the Superior Court's conclusion that the Arbitrator used or applied the wrong standard is correct, the remedy which should have been implemented by the Superior Court was not a *de novo* review to make the findings required by the Act for the arbitrator, but rather to reverse and remand the matter to the arbitrator to apply the correct standard, and make the findings from the record "employing the standards set forth in § 7042 of

this title." 25 *Del. C.* § 7043(g).

In *December Corp.*, the Superior Court concluded, just as the Superior Court here concluded, that the arbitrator's decision was not free from legal error. *Id.*, p. 16. Rather than decide the matter itself based on the facts that were of record then before the Court, an action which is not permitted under Section 7044, the Superior Court there correctly remanded the matter and directed the arbitrator to make the "factual findings regarding the required criteria and to render a decision after making those findings." *Id.*

That was not done by the Court below. Rather, even though it concluded that the arbitrator had misapplied the law, and had never made the required findings under the law, the Court below went ahead and applied the law to the facts (Order, pp. 8-13), an act that it was not authorized to do once it concluded that the arbitrator's decision was not free from legal error. Order, p. 13. That was error.

The same action taken by the Superior Court in *December Corp*. should have been done here below. Once the conclusion was made that there was a legal error by the Arbitrator, the matter should have been reversed and remanded to the Arbitrator to make the initial finding of whether this community owner had met the standard which the Court concluded does apply. This would then allow, on any appeal from that decision, whether the record created in the arbitration is sufficient justification for the arbitrator's decisions and whether those decisions are free from

legal error. 25 *Del. C.* § 7044.

Because the decision of the Court below in the Order was to make the Arbitrator's required finding for him, the failure to remand was erroneous. Because there is a conflict between what was done in this case and in *December Corp*. and because this issue is likely to arise again, which will involve potentially unnecessary appeals to this Court by parties who receive decisions in conflict with *December Corp.*, FSMHA urges the Court to resolve this matter to provide guidance to the Superior Court, community owners and manufactured home owners as to the proper course following a determination by the Superior Court that the arbitrator's decision was legally incorrect.

CONCLUSION

Based on the reasons set forth herein, the proposed *Amicus Curiae*, First State Manufactured Housing Association, respectfully requests that this Honorable Court reverse the finding of the Superior, and reinstate the finding of the Arbitrator finding as justified the rent increase of Sandhill.

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