**Central Comfort Limited Partnership and Creole Engine**

**Housing Equity Fund v. Donald Fitzwater and**

**Adi Fitzwater[[1]](#footnote-1)©**

**COMMON FACTS**

Donald Fitzwater is an experienced landlord in Indianapolis, Indiana, with several low-income elderly apartment complexes. In 1995, plaintiff Creole Empire Housing Equity Fund made up of three local banks, became interested in investing in a limited partnership for tax purposes. A limited partnership, Central Comfort Limited Partnership (Central) was established with Donald Fitzwater as general partner (owning 1% of the partnership) and Creole as the limited partner (owning 99% of the partnership). An initial investment of $650,430 was made on December 19, 1995 with the balance contributed on July 17, 1996 of $433,620, giving a total investment of $1,084,050.

The funds were used to build a forty-unit apartment complex for the elderly and Donald became the manager and his wife, Adi, was made assistant manager and rental agent. The benefit to the limited partners in investing in the complex was the tax credit of $100,000 in revenues each year for investing in the project.

At the time of the mediation, four years of tax credits were still available which would give the limited partners a return of 14.97 percent.

Over the first six years, the project was successful with almost one hundred percent occupancy. However, tenants began complaining about Donald and Adi and the dictatorial way they ran the building. Rules were set in place which most felt were quite unreasonable. Tenants were informed they could not gossip or laugh at the other tenants behind their backs. At least once a week, tenants had to leave their garage doors open so that management could be certain the garages were being used only for cars and not general storage. Tenants were required to demonstrate that they were using their cars by driving them at least once every three days. If not, they had to give up their garages to someone else who was using their car. The general recreational area could not be used for family gatherings even though the tenants’ apartments were too small. Apartments were inspected on a regular basis for cleanliness and if management standards were not met, the tenant was evicted on a forty-five day notice often with nowhere to go. Deposits were withheld when a tenant left and the apartment was not left in pristine condition. This resulted in six lawsuits being filed against the partnership. The tenants were quite frightened of the Fitzwaters because if they did not adhere to all the rules, they could be evicted on a forty-day notice.

Legal Aid came to the rescue of the tenants and threatened the partnership with litigation. This was picked up on television which resulted in adverse publicity to the partnership.

The partnership demanded that the Fitzwaters change their management style, but they didn’t. As a compromise, new managers were brought on premises, but they remained only for a short period because Donald and Adi were so difficult with which to work.

Suit was brought to remove Donald as general manager, or, in the alternative, dissolve the partnership. Mediation was commenced before any discovery was taken.

The mediator discussed three possibilities to resolve the dispute. He asked the parties to consider each.

1. Have Donald remain general partner but not manage the property.
2. Have the limited partners buy out Donald.
3. Have Donald buy out the limited partners.

**ADDITIONAL FACTS**

**DONALD MACOMB AND ADI FITZWATER**

In considering the three alternatives suggested by the mediation, Donald will not agree to another manager. This had been tried twice and it proved very unsatisfactory. Donald has done an excellent job. His wife, Adi, is the best rental agent in Indianapolis and has kept the building almost one hundred percent occupied. This was not the case with other managers. Further, Donald does not want to give up the $20,000 per year management fee, the $10,000 per year (approximately) Adi makes as rental agent, the $12,000 per year his parents make cleaning the apartments, and the $10,000 per year janitorial fee his son makes for part-time maintenance. Under no circumstances will Donald agree to another manager.

He is willing to sell his interest for $750,000. He feels this is far in view of the fact that he and his family will be giving up income of $52,000 per year.

He is willing to buy the limited partners out for $550,000. If pushed, he would go to $750,000. However, he has informed the mediator that raising that much money will put a hardship on his family and him and he would very much like to avoid this option. He really wants to continue running the property with his wife. He asks the mediator to come up with a more creative solution.

**ADDITIONAL FACTS**

**CENTRAL COMFORT LIMITED PARTNERSHIP**

The limited partnership, Central, recognizes that it does not have sufficient grounds to terminate Donald as general partner. It is willing to admit this to the mediator. It is more concerned about the adverse publicity its member banks are receiving on television and radio because of the Fitzwaters unreasonable rules.

It is willing to buy out Donald but will only pay a maximum of $60,000, which it knows Donald will not accept. It is willing to sell out to Donald for $1,200,000, but this is financially undesirable. It will lose four years of tax credits worth $750,000 and nearly 15% return on investment. The money it receives can only be invested at 2½% interest. They are willing to sell out at $1,200,000, which they know Donald will not pay. They are willing to move down some. However, the limited partnership will inform the mediator it does not want to sell out. It asks the mediator to come up with a better settlement plan.

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