

WINMARK CORP  
Form DEF 14A  
March 22, 2004

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Amendment No. )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
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- Soliciting Material Pursuant to §240.14a-12

**Winmark Corporation**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS  
APRIL 28, 2004**

TO THE SHAREHOLDERS OF WINMARK CORPORATION

Notice is hereby given to the holders of the shares of Common Stock of Winmark Corporation that the Annual Meeting of Shareholders of the Company will be held at the Company's corporate offices, 4200 Dahlberg Drive, Suite 100, Minneapolis, Minnesota on Wednesday, April 28, 2004 at 4:00 p.m. Central Daylight Time, to consider and act upon the following matters:

1. To set the number of members of the Board of Directors at seven.
2. To elect seven directors to serve for a term of one year.
3. To increase the number of shares for issuance under the Company's Stock Option Plan for Nonemployee Directors.
4. To ratify the appointment of KPMG LLP as independent auditors for the 2004 fiscal year.
5. To transact such other business as may properly come before the meeting or any adjournments thereof.

Shareholders of record at the close of business on March 9, 2004 will be entitled to vote at the meeting and adjournments of the meeting.

**You are cordially invited to attend the meeting. Even if you do not plan to attend the meeting, we urge you to sign, date and return the proxy at once in the enclosed envelope.**

By the Order of the Board of Directors

/s/ John L. Morgan

John L. Morgan

Chairman and Chief Executive Officer

Dated March 23, 2004

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**Winmark Corporation  
4200 Dahlberg Drive, Suite 100  
Minneapolis, Minnesota 55422-4837  
Annual Meeting of Shareholders  
April 28, 2003**

**PROXY STATEMENT**

**GENERAL**

The Annual Meeting of Shareholders of Winmark Corporation ( Company ) will be held on Wednesday, April 28, 2004, at 4:00 p.m., Central Daylight Time, at the Company's corporate offices, 4200 Dahlberg Drive, Suite 100, Minneapolis, Minnesota, for the purposes set forth in the Notice of Annual Meeting of Shareholders.

The enclosed proxy is solicited by the Board of Directors of the Company. Such solicitation is being made by mail and may also be made by directors, officers and regular employees of the Company personally or by telephone. Any proxy given pursuant to such solicitation may be revoked by the shareholder at any time prior to the voting thereof by so notifying the Company in writing at the above address, attention: General Counsel, or by appearing in person at the meeting. Shares represented by proxies will be voted as specified in such proxies, and if no choice is specified, will be voted in favor of the proposals set forth in the Notice of Meeting and in favor of the number and slate of directors proposed by the Board of Directors and listed herein.

Shares voted as abstentions on any matter (or a withhold authority vote as to directors) will be counted as present and entitled to vote for purposes of determining a quorum and for purposes of calculating the vote with respect to such matter, but will not be deemed to have been voted in favor of such matter. If a broker submits a non-vote proxy, indicating that the broker does not have discretionary authority to vote certain shares on a particular matter, those shares will be counted as present for purposes of determining a quorum, but will not be considered present and entitled to vote for purposes of calculating the vote with respect to such matter.

All of the expenses involved in preparing, assembling and mailing this proxy statement and the material enclosed herewith will be paid by the Company. The Company may reimburse banks, brokerage firms and other custodians, nominees and fiduciaries for reasonable expenses incurred by them in sending proxy material to beneficial owners of stock. This proxy statement and accompanying form of proxy are first being mailed to shareholders on or about March 23, 2004.

**OUTSTANDING SHARES AND VOTING RIGHTS**

The Board of Directors of the Company has fixed March 9, 2004, as the record date for determining shareholders entitled to vote at the Annual Meeting. Persons who were not shareholders on such date will not be allowed to vote at the Annual Meeting. At the close of business on March 9, 2004, 5,714,096 shares of the Company's Common Stock were issued and outstanding. The Common Stock is the only outstanding class of capital stock of the Company entitled to vote at the meeting. Each share of Common Stock is entitled to one vote on each matter to be

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voted on at the meeting. Holders of Common Stock are not entitled to cumulative voting rights.

Under applicable Minnesota law, approval of each proposal requires the affirmative vote of the holders of the greater of (i) a majority of the voting power of the shares represented in person or by proxy at the Annual Meeting with authority to vote on such matter or (ii) a majority of the voting power of the minimum number of shares that would constitute a quorum for the transaction of business at the Annual Meeting.

**ELECTION OF DIRECTORS**

**(Proposals #1 and #2)**

At the meeting, the Board of Directors of the Company is to be elected to hold office until the 2005 Annual Meeting or until successors are elected and have qualified. The Bylaws of the Company provide that the number of directors of the Company shall be fixed by the shareholders, subject to increase by the Board of Directors. The Nominating Committee has recommended to the Board that the shareholders to set the number of directors at seven and elect the nominees named below.

Shares represented by executed proxies will be voted, if authority to do so is not withheld, for the election of the nominees named below, unless one or more of such nominees should become unavailable for election, in which event such shares shall be voted for the election of such substitute nominees as the Board of Directors may propose. Each person nominated has agreed to serve if elected, and the Company knows of no reason why any of the listed nominees would be unavailable to serve.

**Information Concerning Nominees:**

Name and Age	Principal Occupation and Business Experience for Past Five Years
John L. Morgan Age: 62	Mr. Morgan was elected Chairman of the Board and Chief Executive Officer of the Company in March 2000. He was an independent investor/business consultant from April 1999 to February 2000. He was the founder of Winthrop Resources Corporation, a business equipment leasing company, and served as its President from March 1982 through March 1999. In addition, Mr. Morgan is currently a private investor and serves as a member of Rush River Group, LLC.
Stephen M. Briggs Age: 47	Mr. Briggs has been President, Chief Operating Officer and a director of the Company since December 2000. Prior to joining the Company, he served as Senior Vice President (since June 1999) and Vice President of Consumer Coatings Group (from December 1995 to June 1999) of Valspar Corporation, a global leader in the coatings industry.
William D. Dunlap, Jr. Age: 65	Mr. Dunlap was elected a director of the Company in May 2000. He served as Chairman Emeritus at Campbell Mithun, LLC, an advertising company, since July 2003. He served as Chairman of Campbell Mithun, LLC from May 1995 through July 2003, and served as its Chief Executive Officer from 1982 through 1995.
Jenele C. Grassle Age: 43	Ms. Grassle was elected a director of the Company in January 2001. Ms. Grassle has served as the Vice President/General Merchandise Manager of Merchandising at Wilsons Leather, a leading specialty retailer of men's and women's leather apparel and accessories, since July 2000. From September 1988 to March 2000 Ms. Grassle served as Divisional Merchandise Manager for the Target Corporation.





Kirk A. MacKenzie Age: 64	Mr. MacKenzie was elected Vice Chairman and a director of the Company in May 2000. In addition, he is currently a private investor and serves as a member of Rush River Group, LLC. From January 1982 to March 1999, Mr. Mackenzie was Executive Vice President of Winthrop Resources Corporation, a business equipment leasing company.
Paul C. Reyelts Age: 57	Mr. Reyelts was elected a director of the Company in May 2000. He has served as the Senior Vice President of Finance and Chief Financial Officer of the Valspar Corporation, a global leader in the coatings industry, since April 1982.
Mark L. Wilson Age: 55	Mr. Wilson was elected a director of the Company in May 2000. He currently serves as President of Weisman Enterprises, Inc. and its affiliates, a vending and small transaction management company and has served in such role since 1998. From November 1974 to December 1998, he was a corporate law and mergers and acquisitions attorney, most recently as the shareholder and officer of the Minneapolis law firm The Wilson Group Limited. Mr. Wilson was a shareholder in the Minneapolis law firm of Ravich, Kirkman, Wilson, Meyer, Nauen and McGrath from December 1992 to August 1997.

### **Board of Directors Recommendation**

The Board of Directors recommends that the shareholders vote FOR proposal #1 to set the number of members of the Board of Directors at seven and proposal #2 to elect the seven nominees to serve for a one year term.

## **CORPORATE GOVERNANCE AND BOARD MATTERS**

### **Code of Ethics and Business Conduct**

We have adopted the Winmark Corporation Code of Ethics and Business Conduct (the Code of Conduct), that applies to our directors, officers and employees. The Code of Conduct is publicly available on our web site at [www.winmarkcorporation.com](http://www.winmarkcorporation.com). If we make any substantive amendments to the Code of Conduct or grant any waiver, including any implicit waiver from a provision of the code of conduct to our directors or executive officers, we will disclose the nature of such amendments or waiver on our web site or in a report on Form 8-K.

### **Majority of Independent Directors; Committee of Independent Directors**

The Board of Directors has determined that Messrs. Dunlap, Reyelts, Wilson, and Ms. Grassle, constituting a majority of the Board of Directors, are independent directors in accordance with rules of the Nasdaq since none of them are believed to have any relationships that, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Messrs. Morgan, Briggs and MacKenzie are precluded from being considered independent by Nasdaq rules since they either currently serve as executive officers of the Company and/or have had a relationship with the Company that preclude them from being deemed independent under Nasdaq rules.

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Each member of the Company's Audit Committee, Compensation Committee and Nominating Committee has been determined, in the opinion of the Board of Directors, to be independent in accordance with Nasdaq rules.

## **Standing Committees**

The Board of Directors of the Company has three standing committees, the Audit Committee, the Compensation Committee and the Nominating Committee. In February 2004, the Board of Directors approved the New Audit Committee Charter, attached hereto as Appendix A. The Audit Committee Charter is available at [www.winmarkcorporation.com](http://www.winmarkcorporation.com). In December, 2003, the Board of Directors approved the Compensation Committee Charter and the Nominating Committee Charter, each of which is also available at [www.winmarkcorporation.com](http://www.winmarkcorporation.com).

The Audit Committee provides oversight by reviewing financial reports and other financial information of the Company, reviewing the Company's systems of internal control regarding finance, accounting, legal compliance and ethics, and reviewing the Company's auditing, accounting and financial reporting process. The Audit Committee serves as an independent and objective party to monitor the Company's financial reporting process and internal control system. The Audit Committee coordinates, reviews and appraises the audit efforts of the Company's independent accountants. Further, the Audit Committee communicates directly with the independent accountants, financial and senior management and Board of Directors regarding the matters related to the Committee's responsibilities and duties. Paul C. Reyelts is the Audit Committee Financial Expert and Chairperson of the Audit Committee. The Audit Committee, which consists of Paul C. Reyelts, William D. Dunlap, Jr. and Mark L. Wilson, held meetings or took action in writing six times during fiscal 2003.

The Compensation Committee's purpose is to assist the Board of Directors in the discharge of its responsibilities relating to (a) fair, reasonable, and competitive compensation practices for executive officers and other key employees of the Company which are consistent with the Company's objectives; (b) oversight of broad-based employee compensation policies and programs; and (c) fair, reasonable and competitive compensation and benefit programs for the Company's non-employee directors. The Compensation Committee, which consists of Paul C. Reyelts, William D. Dunlap, Jr., Jenele C. Grassle and Mark L. Wilson, held one meeting in fiscal 2003. Mark L. Wilson has been appointed the Chairperson of the Compensation Committee.

The purpose of the Nominating Committee is to advise the Board of Directors and provide oversight on matters related to (a) the selection and nomination of Board Members; (b) the appointment of Board Committee Members. The Nominating Committee, which consists of Paul C. Reyelts, William D. Dunlap, Jr., Jenele C. Grassle and Mark L. Wilson, was created in December, 2003 and held one meeting during fiscal 2003. Jenele C. Grassle has been appointed Chairperson of the Nominating Committee.

The Company has not had a formal policy with regard to the consideration of any director candidates recommended by shareholders. The absence of such policy does not mean, however, the Board will not consider director candidates recommended by shareholders. The Nominating Committee will consider this matter during the upcoming year. The Nominating Committee will consider the attributes of the candidates and the needs of the Board and will review all candidates in the same manner, regardless of the source of the recommendation.

## **Meeting Attendance**

During fiscal 2003, the Board of Directors of the Company held meetings or took action nine times. All directors attended at least 75% of the meetings of the Board of Directors and committees of the Board of Directors on which they served. The Company does not have a policy requiring the directors to attend the shareholders' meeting, but all directors attended the 2003 annual meeting.



### Shareholder Communications

Shareholders may communicate directly with the Board of Directors. All communications should be directed to our Corporate Secretary at the address below and should prominently indicate on the outside of the envelope that it is intended for the Board of Directors or for non-management directors. If no director is specified, the communication will be forwarded to the entire Board. Shareholder communications to the Board should be sent to:

Corporate Secretary  
Attention: Board of Directors  
4200 Dahlberg Drive, Suite 100  
Minneapolis, MN 55422-4837

### Director Compensation

Pursuant to the terms of the Company's Stock Option Plan for Nonemployee Directors, nonemployee directors are automatically granted an option to purchase 25,000 common shares upon the initial election as a director. Pursuant to this Plan, William D. Dunlap, Jr., Kirk A. MacKenzie, Paul C. Reyelts and Mark L. Wilson were each granted an option to purchase 25,000 common shares at an exercise price of \$6.50 per share on May 3, 2000. Also pursuant to this Plan, Jenele C. Grassle was granted an option to purchase 25,000 common shares at an exercise price of \$4.25 per share on January 2, 2001. These options vest 20% per year and expire at the end of six years. Beginning in 2004, each nonemployee director of the Company will receive a \$10,000 annual retainer, \$500 for each Board and committee meeting attended, and an annual option grant to purchase 2,000 shares of the Company's common stock. In addition, the Lead Director and Vice-Chair will each receive \$2,000 annually.

### AUDIT COMMITTEE REPORT

The Board of Directors maintains an Audit Committee comprised of three of the Company's independent directors. The Board of Directors and the Audit Committee believe that the Audit Committee's current member composition satisfies the rule of the National Association of Securities Dealers, Inc. ( Nasdaq ) that governs audit committee composition, Rule 4310(c)(26)(B)(i), including the requirement that audit committee members all be independent directors as that term is defined by Nasdaq Rule 4200(a)(15).

In accordance with its written charter adopted by the Board of Directors, the Audit Committee assists the Board of Directors with fulfilling its oversight responsibility regarding the quality and integrity of the accounting, auditing and financial reporting practices of the Company. In discharging its oversight responsibilities regarding the audit process, the Audit Committee:

(1) reviewed and discussed with management the Company's audited financial statements as of and for the year ended December 27, 2003;

(2) discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61, *Communication with Audit Committees*, as amended by the Auditing Standards Board, and has discussed with the auditors the auditor's independence; and

(3) received and reviewed the written disclosures and the letter from the independent auditors required by the Independence Standards Board's Standard No. 1, *Independence Discussion with Audit Committees*, as amended by the Independence Standards Board, and discussed with the independent auditors any relationships that may impact their objectivity and independence.

Based upon the review and discussions referred to above, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2003, as filed with the Securities and Exchange Commission.

Members of the Audit Committee:

William D. Dunlap, Jr.  
Paul C. Reyelts  
Mark L. Wilson

**EXECUTIVE OFFICERS**

The other executive officers of the Company are as follows:

NAME	AGE	POSITION
John L. Morgan	62	Director, Chairman and Chief Executive Officer
Stephen M. Briggs	47	Director, President and Chief Operating Officer
Brett D. Heffes	36	Chief Financial Officer and Treasurer
Mark T. Hooley	37	Vice President and General Counsel
Rebecca J. Geyer	38	Vice President of Franchise Management
Steven A. Murphy	38	Vice President of Franchise Management

**John L. Morgan** was elected Chairman of the Board and Chief Executive Officer of the Company in March 2000. He was an independent investor/business consultant from April 1999 to February 2000. He was the founder of Winthrop Resources Corporation, a business equipment leasing company, and served as its President from March 1982 through March 1999. In addition, Mr. Morgan is currently a private investor and serves as a member of Rush River Group, LLC.

**Stephen M. Briggs** has been President, Chief Operating Officer and a director of the Company since December 2000. Prior to joining the Company, he served as Senior Vice President (since June 1999) and Vice President of Consumer Coatings Group (from December 1995 to June 1999) of Valspar Corporation, a global leader in the coatings industry.

**Brett D. Heffes** has served as Chief Financial Officer and Treasurer of the Company since November 2002. From April, 2002 until May, 2002, Mr. Heffes was Chief Financial Officer of Gearworks, Inc., a developer and marketer of wireless software. From July 2000 until March 2002, Mr. Heffes was Chief Financial Officer of Applied Epi, Inc. (now a division of Veeco Instruments, Inc.), a developer and manufacturer of process equipment for compound semiconductor devices. From January 1998 to July 2000, Mr. Heffes had a number of positions, most recently Vice

President-Corporate Development and Treasurer, with Department 56, Inc., a designer and marketer of giftware and collectibles. Mr. Heffes is a director for the J. Jill Group, Inc.

**Mark T. Hooley** has served as Vice President and General Counsel of the Company since May 2000. Mr. Hooley has served as General Manager of Winmark Business Solutions since November 2002. From July 1999 to May 2000 Mr. Hooley served as an attorney with the Minneapolis law firm of Briggs & Morgan, P.A. Mr. Hooley was an attorney with the Minneapolis law firm of Mackall, Crouse & Moore, P.L.C. from November 1993 to July 1999. Mr. Hooley is the son-in-law of John L. Morgan, Chairman and CEO of the Company.



**Rebecca J. Geyer** has served as Vice President of Franchise Management of the Company since December 2003 and remains responsible for the Plato's Closet® brand. In addition, Ms. Geyer has served as Director of Franchise Development since July 2002. Ms. Geyer served as Director of the Once Upon A Child® & Plato's Closet® brands of the Company from May 2000 to December 2003. Ms. Geyer served as General Manager of Once Upon A Child® from January 1999 to May 2000 and as General Manager of Plato's Closet® from September 1999 to May 2000. From September 1997 to January 1999 Ms. Geyer served as Senior Manager of Operations and Marketing for Once Upon A Child®. Ms. Geyer served as Manager of Field Operations from October 1994 to September 1997. She joined the Company in September 1993 in the position of Field Operations Manager.

**Steven A. Murphy** has served as Vice President of Franchise Management of the Company since December 2003 and remains responsible for the Play It Again Sports® brand. Mr. Murphy has served as Director of Play It Again Sports® brand of the Company from April 2002 to December 2003. Mr. Murphy served as Director of Marketing and Sales from September 2001 to April 2002. Prior to joining the Company, Mr. Murphy was Vice President of Marketing, e-Commerce and Business Development at Lids Corporation, a specialty retailer, located in Westwood, Massachusetts. From June 1997 until June 2000, he was Vice President New Business Development of Cyrk, Inc., a promotional marketing agency, located in Gloucester, Massachusetts.

The term of office of each executive officer continues until terminated by the Company.

There are no arrangements or understandings among any of the executive officers of the Company and any other person (not an officer or director of the Company) pursuant to which any of the executive officers were selected as an officer of the Company.

**EXECUTIVE COMPENSATION**

The following table sets forth certain information regarding compensation earned or awarded during each of the last three fiscal years to the Company's Chief Executive Officer and each other executive officer (the Named Executive Officers) who received total salary and bonus compensation in excess of \$100,000 for fiscal 2003:

**Summary Compensation Table****Annual Compensation (\$)**

Name and Principal Position	Fiscal Year	Salary		Bonus		Long-Term Compensation	All Other Compensation	
						Securities Underlying Options (#)		
John L. Morgan	2003	\$	100,000				\$	3,750 (1)
Chairman of the Board	2002		100,000					4,000 (1)
and Chief Executive Officer	2001		93,269					3,308 (1)
Stephen M. Briggs	2003		289,615	\$	108,750	20,000		6,750 (1)
President and	2002		275,000		103,125	20,000		7,000 (1)
Chief Operating Officer	2001		250,000 (2)		112,500	50,000		1,000 (1)
Mark T. Hooley	2003		165,000					