

FILED  
4-13-2006 8:12am  
MICHAEL K. JEANES, Clerk  
By M. Sulli  
Deputy

CERTIFIED COPY

1 TERRY GODDARD  
2 Attorney General  
3 Firm State Bar No. 14000

4 SANDRA R. KANE, No. 007423  
5 Assistant Attorney General  
6 Civil Rights Division  
7 1275 W. Washington Street  
8 Phoenix, AZ 85007  
9 Telephone: (602) 542-8862  
10 CivilRights@agaz.gov  
11 Attorneys for Plaintiff

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
13 IN AND FOR THE COUNTY OF MARICOPA

14 THE STATE OF ARIZONA *ex rel.* TERRY  
15 GODDARD, the Attorney General, and THE  
16 CIVIL RIGHTS DIVISION OF THE ARIZONA  
17 DEPARTMENT OF LAW,

18 Plaintiff,

19 vs.

20 FELIKS MLYNARCZYK and BOZENA  
21 MLYNARCZYK, individually, as husband and  
22 wife, and as trustees of the MLYNARCZYK  
23 LIVING TRUST,

24 Defendants.

No. CV2004-015446

CONSENT DECREE

(Assigned to Hon. Kenneth L. Fields)

25 Plaintiff, the State of Arizona, through Attorney General Terry Goddard and the Civil  
26 Rights Division (collectively "the State"), initially commenced this action pursuant to A.R.S. §  
41-1491.27 of the Arizona Fair Housing Act to obtain temporary judicial relief to preserve the  
status quo pending completion of its administrative investigation of two fair housing  
complaints against Defendants Feliks Mlynarczyk and Bozena Mlynarczyk,

1 individually, as husband and wife, and as trustees of the Mlynarczyk Living Trust. Thereafter,  
2 the State filed a Complaint against Defendants alleging violation of the Arizona Fair Housing  
3 Act, A.R.S. §§ 41-1491 to 41-1491.37. Following stipulation of the parties, the Court issued a  
4 preliminary injunction on November 9, 2004 ("the Preliminary Injunction"), enjoining  
5 Defendants and others from selling, encumbering, renting, or otherwise transferring ownership,  
6 security interests, or possession of the subject property consisting of an approximately 2 acre  
7 parcel of residential vacant land adjacent to Defendants' residence on Sacred Eagle Lane in  
8 Sedona, Arizona, and variously designated as parcel no. 408-31-104A or parcel no. 408-31-  
9 104L ("the subject property"), to any person or entity other than Dr. Philip Edington and  
10 Kristina Edington pending final disposition of the present action and further order of the Court.  
11  
12

13  
14 The State and Defendants desire to resolve the issues raised by the Complaint without  
15 the time, expense and uncertainty of further contested litigation. The parties expressly  
16 acknowledge that this Consent Decree is the compromise of disputed claims and that there was  
17 no adjudication of any claim. Without admitting the truth of any claim made in the Complaint,  
18 and without admitting any liability for the claims made in the Complaint filed in this matter,  
19 Defendants agree to be bound by this Consent Decree and not to contest that it was validly  
20 entered into in any subsequent proceeding to implement or enforce its terms. The parties  
21 therefore have consented to the entry of this Consent Decree, waiving trial, findings of fact, and  
22 conclusions of law.  
23  
24  
25

26 It appearing to the Court that entry of this Consent Decree will further the objectives of  
the Arizona Civil Rights Act, and that this Consent Decree fully protects the parties and

1 the public with respect to the matters within the scope of this Consent Decree,

2 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as  
3 follows:

4 **JURISDICTION**

5  
6 1. This Court has jurisdiction over the subject matter of this action and over the  
7 parties hereto, and venue in Maricopa County is proper.

8 **RESOLUTION OF THE COMPLAINT**

9  
10 2. This Consent Decree resolves all issues and claims raised in the State's  
11 Complaint filed in this case, and issues and claims that were required to be raised, or that could  
12 have been raised under the Arizona Fair Housing Act with respect to the administrative fair  
13 housing complaints filed against Defendants by Philip and Kristina Edington and by Roy  
14 Grimm dba Buyer Brokers Realty of Sedona..

15 **NO DISCRIMINATION**

16  
17 3. Defendants shall not engage in housing discrimination based upon race, color,  
18 religion, sex, familial status, disability or national origin.

19 **NO RETALIATION**

20  
21 4. Defendants shall not directly or indirectly engage in retaliation of any kind  
22 against Philip Edington, Kristina Edington, Edward Pennington, Roy Grimm, Laura  
23 Pennington, Buyer Brokers Realty of Sedona, or against any other person because of the  
24 matters raised in the State's Complaint or because he or she has opposed any practice  
25 reasonably believed by him or her to be unlawful under A.R.S. §§ 41-1491.14 through  
26

1 41-1491.21, or because they have given testimony or assistance, or participated in any manner  
2 in any investigation or proceeding under the Arizona Fair Housing Act.

3 **MODIFICATION OF THE PRELIMINARY INJUNCTION**

4  
5 5. The Preliminary Injunction dated November 9, 2004 is hereby modified to allow  
6 Defendants to place the subject property for sale with a close of escrow no later than 120 days  
7 from entry of this Consent Decree.

8  
9 6. The Preliminary Injunction is further modified to allow close of escrow to take  
10 place on the sale of the subject property without further order of this Court, provided that: (a)  
11 upon the opening of escrow, Defendants present to the State a copy of the escrow instructions  
12 showing (i) that escrow is to close on or before 120 days after the date of entry of this Consent  
13 Decree, (ii) that payments totaling \$185,000 will be made in accordance with Paragraph No. 8  
14 of this Consent Decree, and (iii) that no changes may be made to the escrow instructions with  
15 respect to the items set forth in Paragraph No. 6(a); and (b) Defendants through their escrow  
16 agent actually pay \$185,000.00 in full to the State and/or its designees, in accordance with  
17 Paragraph No. 8 of this Consent Decree no later than the earlier of five (5) days after close of  
18 escrow or 125 days after entry of this Consent Decree.

19  
20  
21  
22 7. The Preliminary Injunction, as modified, will remain in place until payment by  
23 Defendants or, in the event of sale of the subject property within 120 days after entry of this  
24 Consent Decree, payment by Defendants through their escrow agent, of the full \$185,000 in  
25 accordance with Paragraph No. 8. However, upon payment in full of \$185,000 in accordance  
26

1 with Paragraph No. 8 of this Consent Decree, the Preliminary Injunction will be vacated and  
2 shall be of no further force or effect.

### 3 MONETARY PAYMENTS

4 8. Whether or not Defendants sell the subject property, Defendants shall pay the  
5 sum certain of One Hundred Eighty-Five Thousand Dollars (\$185,000), no later than the earlier  
6 of five days after close of escrow on the subject property through their escrow agent or one  
7 hundred twenty-five (125) days after entry of this Consent Decree, by means of the following  
8 checks delivered to Sandra R. Kane, Assistant Attorney General, Civil Rights Division, 1275  
9 W. Washington, Phoenix, AZ 85007, or her successor: (a) a check in the amount of \$120,000  
10 made payable to Philip and Kristina Edington; (b) a check in the amount of \$25,000 made  
11 payable to Buyer Brokers Realty of Sedona; (c) a check in the amount of \$20,000 made payable  
12 to the Civil Rights Division, Attorney General's Office for reimbursement of attorneys' fees  
13 and costs; and (d) a check in the amount of \$20,000 made payable to the Civil Rights Division,  
14 Attorney General's Office for monitoring and enforcement of civil rights in Arizona. If  
15 payment is made directly by Defendants rather than their escrow agent, all payments must be  
16 made with cashier's checks.  
17  
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21

### 22 COSTS

23 9. Except as set forth in Paragraph No. 8 above, the parties shall bear their  
24 respective attorneys' fees and costs incurred in this action up to the date of entry of this Consent  
25 Decree. In any action brought to assess or enforce Defendants' compliance with the terms of  
26

1 this Consent Decree, the Court in its discretion may award reasonable costs and attorneys' fees  
2 to the prevailing party.

### 3 **CONTINUING JURISDICTION OF THE COURT**

4  
5 10. The Court shall retain jurisdiction over both the subject matter of this Consent  
6 Decree and the parties for a period of not less than two years from entry of the Consent Decree.  
7 This Consent Decree shall expire by its own terms at the end of two years after entry of the  
8 Consent Decree, without further action of the parties. The State may petition this Court for  
9 compliance with this Consent Decree at any time during the period that this Court maintains  
10 jurisdiction over this action. Should the Court determine that Defendants have not complied  
11 with this Consent Decree, appropriate relief, including extension of the Consent Decree for such  
12 period as may be necessary to remedy the non-compliance, may be ordered.  
13  
14

### 15 **MISCELLANEOUS PROVISIONS**

16  
17 11. This Consent Decree shall be governed in all respects whether as to validity,  
18 construction, capacity, performance or otherwise by the laws of the State of Arizona.

### 19 **RELEASE**

20  
21 12. Defendants' obligations under this Consent Decree shall be binding upon  
22 Defendants' heirs, assigns, successors, successors-in-interest, receivers, trustees in bankruptcy,  
23 personal representatives, agents, employees, and all persons in active concert or participation  
24 with Defendants.  
25

### 26 **MODIFICATION**

13. There shall be no modification of this Consent Decree without the written

1 consent of Defendants and the State and the further order of this Court. In the event of a  
2 material change of circumstances, the parties agree to make a good faith effort to resolve this  
3 matter. If the parties are unable to reach agreement, either party may ask the Court to make  
4 such modifications as are appropriate.  
5

6 **EFFECTUATING DECREE**

7 14. The parties agree to the entry of this Decree upon final approval by the Court.

8 The effective date of this Decree shall be the date that it is entered by the Court.  
9

10 ENTERED AND ORDERED this 11 day of April 2006.

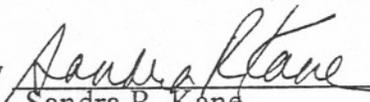
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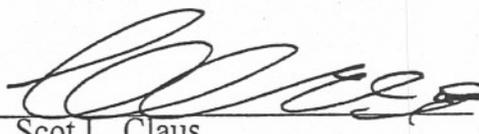
13 Honorable ~~Kenneth L. Fields~~  
14 Judge, Maricopa County Superior Court

15 APPROVED AS TO FORM AND SUBSTANCE this 10 day of April, 2006:  
16

17 TERRY GODDARD  
18 Attorney General

MARISCAL, WEEKS, McINTYRE  
& FRIEDLANDER, P.A.

19  
20 By   
21 Sandra R. Kane  
22 Assistant Attorney General  
23 Attorneys for Plaintiff

By   
24 Scot L. Claus  
25 Attorneys for Defendants

26 ORIGINAL filed this 13<sup>th</sup> day of  
April 2006, with:

Clerk of the Court  
Maricopa County Superior Court  
101/201 West Jefferson  
Phoenix, Arizona 85003

The foregoing instrument is a full, true and correct copy  
of the original document.

Attest April 13 20 06  
MICHAEL K. JEANES, Clerk of the Superior Court of the  
State of Arizona, in and for the County of Maricopa.

By M. Salli Deputy