

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK MALLOY AND ORLENE  
MALLOY,  
Appellants,  
vs.  
WELLS FARGO BANK,  
Respondent.

No. 56589

**FILED**

OCT 18 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (the Program), appellants Patrick and Orlene Malloy filed a petition for judicial review in district court. The Malloys contended that respondent Wells Fargo Bank's conduct was sanctionable because it failed to produce certain required documents at the mediation. See NRS 107.086(4), (5). The district court denied the Malloys' petition and ordered that a foreclosure certificate be issued. As explained below, we reverse.

Standard of review

"[W]e . . . review a district court's decision regarding the imposition of sanctions for a party's participation in the Foreclosure Mediation Program under an abuse of discretion standard." Pasillas v. HSBC Bank USA, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1281, 1286 (2011).

Wells Fargo failed to produce the required documents

To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation, (2)

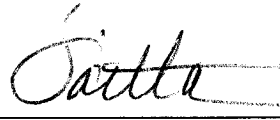
participate in good faith, (3) bring the required documents, and (4) if attending through a representative, have a person present with authority to modify the loan or access to such a person. NRS 107.086(4), (5); Leyva v. National Default Servicing Corp., 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with the Program's requirements is necessary).

NRS 107.086(4) states that the deed of trust beneficiary or its representative "shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note." Moreover, the Foreclosure Mediation Rules (FMRs) require the beneficiary or its representative to provide the homeowner with an appraisal of the homeowner's home prior to the mediation. FMR 11(1), (3)(b).

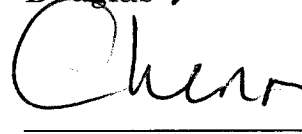
Here, the record on appeal demonstrates that Wells Fargo failed to produce a certified copy of the mortgage note and that it failed to provide the Malloys with an appraisal prior to the mediation. Because Wells Fargo failed to strictly comply with the Program's requirements, the district court abused its discretion in ordering a foreclosure certificate to be issued. Leyva, 127 Nev. at \_\_\_, 255 P.3d at 1279; Pasillas, 127 Nev. at \_\_\_, 255 P.3d at 1286.

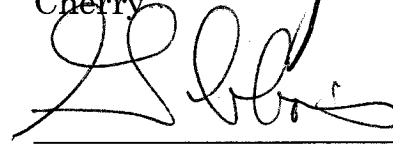
On remand, the district court must determine how Wells Fargo should be appropriately sanctioned. Pasillas, 127 Nev. at \_\_\_, 255 P.3d at 1286-87 (construing NRS 107.086(5) to mean that a violation of one of the four statutory requirements must be sanctioned and that the district court is to consider several factors in determining what sanctions are appropriate). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


  
\_\_\_\_\_, C.J.  
Saitta

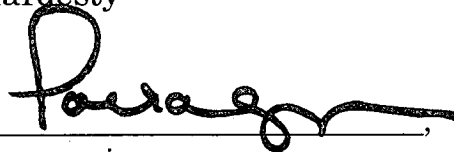
  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Patrick Flanagan, District Judge  
Mark L. Mausert  
McCarthy & Holthus, LLP/Las Vegas  
Washoe District Court Clerk