

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MURRAY,
Appellant,
vs.
SUNTRUST MORTGAGE, INC.,
Respondent.

No. 56738

FILED

SEP 20 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingraham*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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, appellant David Murray filed a petition for judicial review seeking sanctions against his loan servicer, respondent SunTrust Mortgage, Inc. Murray contended that SunTrust's conduct was sanctionable on two of NRS 107.086(5)'s four grounds: (1) it lacked the authority to negotiate a modification of his home loan, and (2) it mediated in bad faith by putting its own financial interests ahead of the deed of trust beneficiary's.

The district court found that SunTrust's conduct was not sanctionable, denied Murray's petition for judicial review, and ordered that a foreclosure certificate be issued. As explained below, we affirm the district court's order.

Standard of review

"[W]e . . . review a district court's decision regarding the imposition of sanctions for a party's participation in the Foreclosure

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Mediation Program under an abuse of discretion standard.” Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, ___ P.3d ___, ___ (2011).

Lack of authority

Murray contends that SunTrust, both as an entity and its employee individually, lacked authority to negotiate a modification of his loan. This argument is belied by the record. First, the Pooling and Servicing Agreement between SunTrust and the deed of trust beneficiary expressly authorizes SunTrust to modify the loans it services without the deed of trust beneficiary’s consent. Cf. NRS 107.086(4) (“The beneficiary of the deed of trust or a representative shall attend the mediation. . . . [T]hat person must have authority to negotiate a loan modification” (emphasis added)).

Second, the SunTrust employee who participated in the mediation via telephone stated in a sworn affidavit that she had the authority to negotiate Murray’s loan. Cf. FMR 10(1)(a) (“A beneficiary or its representative . . . , if approved by the mediator in advance, . . . may participate in the mediation by phone.”). Accordingly, the district court properly refused to sanction SunTrust for ostensibly lacking the authority to modify Murray’s loan.

Bad faith

Murray contends that SunTrust was financially motivated to foreclose on his home so that it could avoid advancing his missed loan payments to the deed of trust beneficiary. This financial motivation, Murray contends, led SunTrust to put its own financial interests ahead of the deed of trust beneficiary’s, which amounted to bad-faith participation in the mediation. We disagree.

The Pooling and Servicing Agreement obligates SunTrust to protect the deed of trust beneficiary's interests in the same manner that SunTrust would protect its own interests if it owned Murray's loan. Thus, as an initial matter, SunTrust is contractually prohibited from doing what Murray contends it did.


More importantly, the record demonstrates that SunTrust fulfilled this contractual obligation. SunTrust's attorney played a prominent role in the weeks leading up to the mediation to make sure that SunTrust had Murray's necessary financial information, and she even suggested that Murray's wife's financial information might make a difference in the loan-modification process.

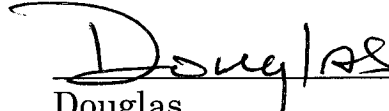
The record further indicates that Murray's income-to-expense ratio was what prevented a modification agreement from being reached—not SunTrust's allegedly underhanded financial motives. Accordingly, the district court acted within its discretion in refusing to sanction SunTrust for bad-faith participation.¹


Based on the foregoing, we conclude that the district court did not err in denying Murray's petition for judicial review, and we therefore


¹Because the district court did not modify the terms of Murray's loan as a sanction, we need not consider the parties' arguments regarding the constitutionality of doing so. Secretary of State v. Nevada State Legislature, 120 Nev. 456, 463, 93 P.3d 746, 750-51 (2004) (refusing to entertain a constitutional question when the case presented "no concrete controversy to resolve").

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Saitta

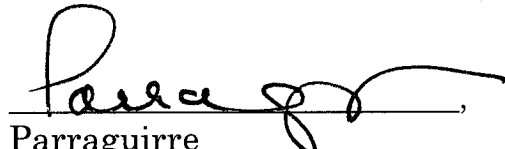

_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Geoffrey Lynn Giles
Snell & Wilmer, LLP/Las Vegas
Wright, Finlay & Zak, LLP
Washoe District Court Clerk