

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVANGELINA M. QUINTANA-TUREK,
Appellant,
vs.
AURORA LOAN SERVICES, LLC; AND
QUALITY LOAN SERVICE
CORPORATION,
Respondents.

No. 56960

FILED

FEB 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
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 matter. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (FMP), appellant Evangelina Quintana-Turek filed a petition for judicial review in district court. Quintana-Turek contended that respondents had failed to produce all required documents and that the representative who was available by telephone at the mediation had only limited authority to negotiate. See NRS 107.086(4), (5). In opposition to the petition for judicial review, respondents asserted that, according to the mediator's statement, both parties had failed to produce all required documents. They further contended that the representative offered several modification or short-sale alternatives and was not obligated to accept one offered by Quintana-Turek; they did not directly controvert Quintana-Turek's allegation that the representative's authority was limited. Notwithstanding Quintana-Turek's request for an evidentiary hearing to resolve the contested factual issues, the district court summarily denied the petition and ordered that a foreclosure certificate be issued. As explained below, we reverse.

We review a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"), and its legal determinations de novo, Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). Absent factual or legal error, the choice of sanction in an FMP judicial review proceeding is committed to the sound discretion of the district court. Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1287 (2011).

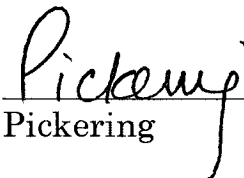
To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation; (2) participate in good faith; (3) bring the required documents; and (4) if attending through a representative, have a person present with authority to modify the loan 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 these requirements is necessary).

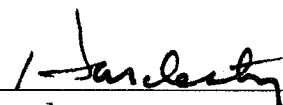
After review of the record on appeal and considering the arguments of counsel, it appears that factual disputes exist concerning the parties' production of documents. In addition, the Foreclosure Mediation Rules (FMR) provide that the appraisal or broker's price opinion (BPO) must be dated no more than 60 days prior to the mediation. FMR 8(4) and (5) (June 1, 2010) (amended and renumbered FMR 11(3) effective March 1, 2011). Here, the BPO was almost seven months old. Finally, while NRS 107.086(4) requires the representative attending or available to the


mediation to have authority to negotiate a loan modification, it is not clear that the representative in this case had the requisite authority.

On appeal, as in district court, respondents contend that substantial evidence supports the district court's decision. They also repeat their district court statement that they were not required to accept any of Quintana-Turek's proposals, but they do not controvert her assertions that the representative at the mediation lacked authority to negotiate. We conclude that the district court abused its discretion in failing to conduct an evidentiary hearing regarding the contested factual issues. Accordingly, we reverse the district court's order and remand this matter to the district court. On remand, the district court shall conduct an evidentiary hearing to determine the representative's authority, each party's failure to provide the required documentation, and sanctions, if appropriate.

It is so ORDERED.¹

 _____, J.
Pickering

 _____, J.
Hardesty

 _____, J.
Parraguirre

¹We have determined that this appeal should be submitted for decision on the briefs and appellate record without oral argument. See NRAP 34(f)(1).

cc: Hon. Donald M. Mosley, District Judge
Crosby & Associates
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk