

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELINDA J. PANKEY, (DRYWALL),
Appellant,
vs.
WELLS FARGO HOME MORTGAGE,
Respondent.

No. 57059

FILED

MAR 21 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
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. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (the Program), appellant Melinda J. Pankey filed a petition for judicial review of the mediator's statement. Pankey contended, among other things, that respondent Wells Fargo Home Mortgage, the master servicer of the underlying promissory note, violated the document production requirement of NRS 107.086(4) by producing allegedly fraudulent documents at mediation. As a result, Pankey argued that she was entitled to sanctions pursuant to NRS 107.086(5). The district court denied Pankey's petition and ordered that a foreclosure certificate be issued. As explained below, we reverse.

We review a district court's decision whether to impose sanctions in regard to a party's participation in the Program for an abuse of discretion. Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1286 (2011). 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).

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)¹; Pasillas, 127 Nev. at ___, 255 P.3d at 1286; see also Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is necessary).

Foreclosure Mediation Rule (FMR) 10(1)(a)² requires the beneficiary of the deed of trust or its representative to “bring to the mediation the original or a certified copy of . . . each assignment of the deed of trust and each endorsement of the mortgage note.” Pursuant to FMR 11(4)(a), “a certified copy of . . . each assignment of the deed of trust

¹NRS 107.086 was amended by the 2011 Nevada Legislature. See 2011 Nev. Stat., chs. 306, 357, & 513, §§ 20.7, 1.7, & 7, at 1683-85, 2033-35, 3538-40. However, these amendments do not affect the substance of the sections of NRS 107.086 referenced in this order.

²On February 16, 2011, this court entered an order amending the Foreclosure Mediation Rules, effective March 1, 2011. ADKT 435 (Order Amending Foreclosure Mediation Rules, February 16, 2011). The amendments resulted in a reshuffling of the information contained in the rules, but did not alter the substance of the rules referenced in this order. Accordingly, we will refer to the rule number in which the pertinent information is currently located when referring to a Foreclosure Mediation Rule in this order.

and each endorsement of the mortgage note is only satisfied when the mediator receives a statement under oath signed before a notary public . . . which includes . . . [t]he . . . capacity[] and authority of the person making the certification.”

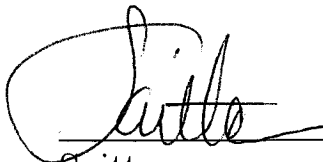
Here, on June 30, 2010, the original beneficiary Mortgage Electronic Registration Systems, Inc. assigned the underlying promissory note and corresponding deed of trust to HSBC Bank USA, N.A., as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2006-AR6, through a Corporation Assignment of Deed of Trust (the Assignment). In July 2010, Pankey and Wells Fargo participated in a mediation conducted under the Program, at which Wells Fargo produced hard copies of the Assignment and the corresponding certification required by FMR 10(1) (the Certification). The Certification was executed on June 29, 2010—one day before the Assignment was executed—and it failed to express the capacity and authority of the person making the Certification.


Pankey argues on appeal that Wells Fargo violated FMR 10(1)(a) and FMR 11(4)(a) because the Assignment and Certification provided at mediation were fraudulent. Although Wells Fargo conceded in the district court that the capacity and authority of the person who executed the Certification is unknown, it asserted in the district court and on appeal that the date discrepancy is merely due to a scrivener’s error.


After review of the record on appeal and considering the arguments of counsel, it appears that a factual dispute exists concerning the validity of the Assignment and the Certification produced by Wells Fargo at the mediation. The district court did not specifically resolve these discrepancies, and we are unable to determine whether Wells Fargo produced a valid Assignment and Certification at the mediation.

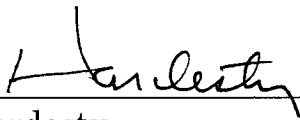
Furthermore, this court should not assume that the date discrepancy is merely a scrivener's error because counsel for Wells Fargo exercises no control over the scriveners. Thus, we conclude that the district court abused its discretion in failing to conduct an evidentiary hearing regarding the above factual dispute. 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 whether the Assignment and accompanying Certification produced by Wells Fargo at the mediation were valid.³ Based on the foregoing, we

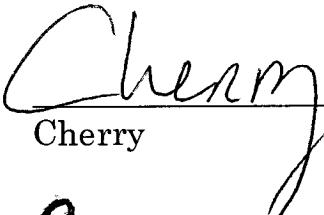
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



Saitta, C.J.

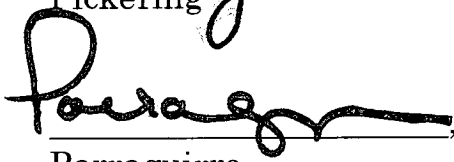

Douglas, J.


Gibbons, J.


Hardesty, J.


Cherry, J.


Pickering, J.


Parraguirre, J.

³Because we conclude that reversal is warranted on this basis, we do not address the parties' remaining contentions.

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