

IN THE SUPREME COURT OF THE STATE OF NEVADA

RACAL LANIER,
Appellant,
vs.
DEUTSCHE BANK; CITI
RESIDENTIAL LENDING; ARGENT
MORTGAGE; AND AMERICAN HOME
MORTGAGE SERVICING, INC.,
Respondents.

No. 57185

FILED

MAR 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in a Foreclosure Mediation Program (FMP) matter. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

This court reviews a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that 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).

If a homeowner fails to return an election to mediate to the trustee within 30 days after being properly served under NRS 107.080, the trustee shall execute an affidavit attesting to this fact under penalty of perjury and serve a copy of the affidavit, together with the proof of service

on the homeowner of the notice required by NRS 107.080 and NRS 107.086, upon the FMP administrator, who “shall provide to the trustee a certificate which provides that no mediation is required in the matter.” NRS 107.086(3).

In this action, respondents applied for and obtained a certificate from the FMP administrator under NRS 107.086(3), when appellant did not request mediation within 30 days from the date when respondents mailed the notice of default and election to mediate form to appellant. After obtaining the certificate, respondents recorded a notice of trustee’s sale. Appellant then filed a petition for judicial review under FMR 6(1) (amended and renumbered FMR 21(1), effective March 1, 2011), contending that she never received the election to mediate form. Respondents filed a response to the petition, and appellant replied. The district court held a hearing on the matter and found that respondent had given proper notice to appellant and that appellant failed to elect mediation within the allotted time. This appeal followed.

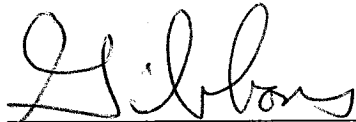
In her civil proper person appeal statement, appellant contends that she never received the election-to-mediate form, and that she should be afforded an opportunity to mediate. Respondents contend that the district court’s order denying judicial review and ordering a certificate to issue is supported by substantial evidence.

In the district court, respondents submitted copies of the notice of default and mediation forms, along with affidavits attesting that the documents had been mailed, as well as copies of the certified mail receipts and the trustee’s affidavit and request for issuance of certificate attesting that the notice of default had been served as required by NRS 107.080. Based on the record before the district court, we conclude that


the district court's finding that the notice of default and mediation forms were properly served is supported by substantial evidence. Ogawa, 125 Nev. at 668, 221 P.3d at 704. Accordingly, appellant's right to elect mediation expired 30 days after service was complete, NRS 107.086(3), and the district court correctly concluded that appellant failed to elect to mediate within the time allotted. Thus, the district court properly denied appellant's petition for judicial review and ordered a certificate to issue, based on its findings that respondents complied with the statutes and foreclosure mediation rules and did not act in bad faith.¹

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Racal LaNier
Brooks Bauer LLP
Eighth District Court Clerk

¹Because we affirm on this basis, we decline to reach respondents' other arguments.

²Having considered all of the issues raised in appellant's civil appeal statement, we conclude that her other contentions lack merit and do not warrant reversal of the district court's order.