

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERALD A. BANGSTON,
Appellant,
vs.
GREATER NEVADA MORTGAGE
SERVICES; AND MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS,
Respondents.

No. 57302

FILED

FEB 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
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 (FMP), appellant Jerald Bangston filed a petition for judicial review in district court, asserting that respondent Greater Nevada Mortgage Services (GNMS) had negotiated in bad faith and failed to comply with the FMP's statutory requirements.¹ See NRS 107.086(4), (5). After a hearing on these matters, the district

¹The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition. We recognize that Bangston has recently filed a supplemental appendix. In large part, Bangston's supplemental appendix contains information that was previously filed as part of his docketing statement. The only new information consists of two computer printouts indicating that GNMS is merely the servicer of his loan. Bangston has failed to provide an explanation of how this new information relates to any previously raised arguments. As such, we decline to consider this information and dismiss as moot GNMS's motion to strike. *Estate of LoMastro v. American Family Ins.*, 124 Nev. 1060, 1079 n.55, 195 P.3d 339, 352 n.55 (2008).

court denied Bangston's petition and ordered that a foreclosure certificate be issued.

Standard of review

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).

The district court did not abuse its discretion in ordering a foreclosure certificate to be issued

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).

On appeal, Bangston argues that the district court improperly ordered that the foreclosure certificate issue because GNMS failed to

produce a Broker's Price Opinion (BPO) that was created within 60 days of mediation pursuant to Foreclosure Mediation Rule (FMR) 11(3)(b).²

While the record on appeal does not include the BPO at issue, Bangston seemingly concedes that the BPO was created 61 days prior to mediation. As NRCP 6(a) provides that "the day of the act . . . shall not be included" in the computation of time, this entire argument is steeped in an apparent miscalculation.

In any event, although we have previously concluded that the note, deed of trust, and each assignment must be provided under the Foreclosure Mediation Rules, Pasillas, 127 Nev. at ___, 255 P.3d at 1285, and have imposed a strict compliance standard for these core or "essential documents," Levy, 127 Nev. at ___, 255 P.3d at 1277-79; see also NRS 107.086(4), (5) (requiring production of the note, deed of trust, and each assignment), this strict-compliance requirement does not extend to the individual contents of a BPO and other collateral documents. As we stated

²The Foreclosure Mediation Rules were amended effective March 1, 2011. The analogous prior rules, which were in effect when Bangston's petition was considered in the district court, were FMR 8(3), (4).


Bangston raises two additional arguments. First, he argues that GNMS was not the real party in interest to attend the mediation. However, Bangston does not dispute that he obtained the original loan from GNMS and that a representative from GNMS appeared at the mediation with the original note, offering to reduce Bangston's monthly payment by 50 percent. Thus, the district court did not abuse its discretion in concluding that GNMS is a real party in interest.

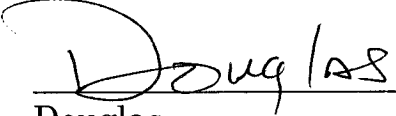
Second, Bangston argues that GNMS negotiated in bad faith by refusing to disclose the amount of consideration paid to MERS for the assignment. We find it unnecessary to reach the merits of this argument, as the record does not support that an assignment actually occurred. Instead, MERS was simply transferring back to GNMS any authority it retained to act on GNMS's behalf.

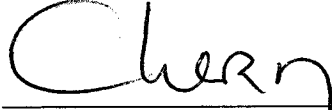
in Leyva, the purpose of the document production requirements is to ensure that the foreclosing party actually owns the note and has the authority to negotiate. 127 Nev. at ___, 255 P.3d at 1279. The contents of a BPO do not establish or affect this authority. We conclude that GNMS complied with FMR 11(3)(b).


Therefore, the district court did not abuse its discretion in declining to sanction GNMS for failing to produce a required document and ordering the foreclosure certificate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

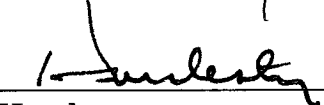

_____, C.J.
Saitta

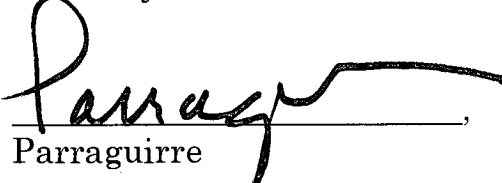

_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

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