

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WATSON,
Appellant,
vs.
BANK OF AMERICA,
Respondent.

No. 57506

FILED

FEB 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. 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 Program (FMP) matter. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

We review 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).

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).

The principal arguments articulated in the opening brief, whether strict or substantial compliance controls, the appropriate standard of review governing these cases, and whether a certificate from the Foreclosure Mediation Program could issue notwithstanding the failure of respondent to strictly comply with the requirements of NRS 107.086, have all been resolved by our opinions, Leyva, 127 Nev. ___, 255 P.3d 1275; and Pasilla, 127 Nev. ___, 255 P.3d 1281, both of which were decided after the opening brief was filed in this matter. Further, based on the standards set forth in those opinions, we conclude that the district court improperly ordered a certificate to issue, since a certified copy of the deed of trust was not produced at the mediation violating NRS 107.086(4).¹ Pasillas, 127 Nev. at ___, 255 P.3d at 1286-87.


A foreclosing party's failure to bring the required documents to the mediation is a sanctionable offense under NRS 107.086 and the Foreclosure Mediation Rules (FMR). Pasillas, 127 Nev. at ___, 255 P.3d at 1286-87. Therefore, we conclude the district court abused its discretion when it denied appellant's petition for judicial review, and the district


¹Although respondent asserts a challenge to appellant's preservation of the issue of respondent's failure to bring a certified copy of the deed of trust to the mediation, appellant challenged the failure to provide him with the statutorily required documents and he argued that this hampered the negotiation in his verified petition for judicial review. We conclude that the issue was properly raised at the district court, and thus, preserved.

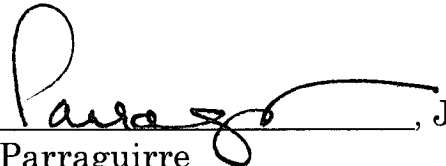
court's order must be reversed and the matter remanded to the district court to determine appropriate sanctions for respondent's violation of the statutory document production requirement.²

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Howard Kim & Associates
Legal Aid Center of Southern Nevada
Pite Duncan, LLP
Eighth District Court Clerk

²While appellant contends that respondent failed to provide him with the required documents ten days before the mediation, as required by FMR 8 (amended and renumbered FMR 11 (effective March 1, 2011)), in light of the clear statutory violation due to respondent's failure to bring a certified deed of trust, NRS 107.086(4), we need not reach this issue.

³We submit this appeal for decision without oral argument. NRAP 34(f)(1).