

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES J. WINTERS,
Appellant,
vs.
BAC HOME LOANS SERVICING, LP
F/K/A COUNTRYWIDE HOME LOANS
SERVICING, LP,
Respondent.

No. 57616

FILED

DEC 12 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 program (FMP) matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

This court reviews a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (stating 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) and (5); Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is necessary).

Having reviewed the briefs and appendices, we conclude that the district court abused its discretion in ordering a foreclosure certificate to be issued. Respondent failed to provide an assignment of the deed of trust from the listed beneficiary Mortgage Electronic Registration Systems, Inc. See Edelstein v. Bank of New York Mellon, 128 Nev. ___, 286 P.3d 249 (2012). Respondent argues that an assignment was unnecessary because it took over the bank that was the originating lender. Respondent failed, however, to raise this argument or provide evidentiary support for its assertion in the district court, thus we do not consider it for the first time on appeal. See Einhorn v. BAC Home Loans Servicing, 128 Nev. ___, ___ n.3, ___ P.3d ___, ___ n.3 (Adv. Op. No. 61, December 6, 2012).

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. 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 allowed the certificate to issue, and the court's order must be reversed and the matter remanded to the district court to determine appropriate sanctions for respondent's violation. Accordingly, we

