

IN THE SUPREME COURT OF THE STATE OF NEVADA

COLLETTE SHERBINO,
Appellant,
vs.
SELECT PORTFOLIO SERVICING,
INC.,
Respondent.

No. 59096

FILED

JUN 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Maline*
DEPUTY CLERK

ORDER DISMISSING APPEAL

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


On April 24, 2012, this court ordered appellant to show cause why this appeal should not be dismissed as moot based on appellant's representation in her reply brief that the underlying notice of default concerning her home had been rescinded and that a loan modification had been reached. Appellant responded, arguing that this court should reverse the district court's order and remand for the imposition of sanctions due to bad faith. Appellant's response further indicated that a loan modification was offered after appellant filed her appeal statement. Respondent has replied to appellant's response, acknowledging that the notice of default has been rescinded.

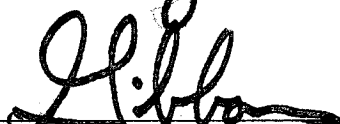
No foreclosure can occur based on the now rescinded notice of default. Any future foreclosure proceedings would require respondent to record a new notice of default, which would provide appellant with a new opportunity to elect to mediate. NRS 107.080; 107.086; see also Holt v. Regional Trustee Services Corp., 127 Nev. ___, ___, 266 P.3d 602, 606-07 (2011). Thus, we conclude that as to the issue of the certificate and issues concerning the foreclosure, this appeal is moot. See Personhood Nevada v. Bristol, 126 Nev. ___, ___, 245 P.3d 572, 574 (2010) (explaining that this court's duty is to decide actual controversies and not give opinions on moot questions).

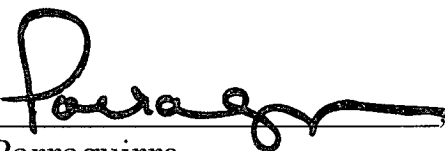
The issue of sanctions in an FMP matter is not rendered moot by the rescission of the notice of default, cf. FMR 8(3) (obligation to mediate in good faith cannot be unilaterally avoided by rescission of the notice of default), but respondent contends that the matter has been resolved, and thus is moot, by the parties' loan modification agreement entered during the pendency of the appeal. Respondent attached to its reply a copy of the loan modification agreement bearing appellant's signature, which, among other things, provided appellant with a reduction of the principal owed on the note. A signed agreement arising within the FMP or subsequent proceedings is a valid enforceable settlement agreement, which waives claims of noncompliance with NRS 107.086 and the FMR. See Jones v. SunTrust Mortgage, Inc., 128 Nev. ___, 274 P.3d. 762 (2012). Thus, because the loan modification agreement constitutes a valid enforceable settlement agreement, appellant waived any basis for requesting sanctions for violations of NRS 107.086 and the FMR,

rendering the issue of sanctions moot. Id.; Personhood Nevada, 126 Nev. at ___, 245 P.3d at 574. Accordingly, we

ORDER this appeal DISMISSED.¹


_____, J.
Pickering


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Collette Sherbino
Wright, Finlay & Zak, LLP, Las Vegas
Wright, Finlay & Zak, LLP, Newport Beach
Tiffany & Bosco, P. A.
Eighth District Court Clerk

¹We conclude that appellant's argument that respondent lacked authority to enter into the modification agreement lacks merit, and thus, does not provide a basis for reversal.