

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILDRED WALKER,  
Appellant,  
vs.  
EMC MORTGAGE CORPORATION;  
AND NATIONAL DEFAULT  
SERVICING CORPORATION,  
Respondents.

No. 59330

FILED

JAN 17 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Anderson*  
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.

Following an unsuccessful mediation, which spanned several sessions, appellant Mildred Walker filed a petition for judicial review, seeking sanctions against respondents. After briefing and a hearing, the district court denied the petition, concluding that respondents had complied with NRS 107.086 and the foreclosure mediation rules (FMR), and that the parties negotiated in good faith but could not reach an agreement. The district court noted that an FMP certificate had already issued, and ordered that respondents could proceed with foreclosure.

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).


To obtain an FMP certificate, a deed of trust beneficiary must: (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). The purpose of FMP mediation and its attendant requirements is to bring the deed of trust beneficiary and the homeowner together for meaningful negotiation. Holt v. Regional Trustee Services Corp., 127 Nev. at \_\_\_, \_\_\_, 266 P.3d 602, 607 (2011).

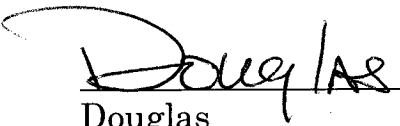
Although appellant contends that respondents failed to bring any of the required documents to the initial mediation session, the mediator did not record any document production deficiencies on the mediator's statement. Thus, the district court's conclusion that respondents complied with the document production requirement is supported by substantial evidence. Ogawa, 125 Nev. at 668, 221 P.3d at 704.

Appellant also argues that respondents' representatives lacked sufficient authority to negotiate. In the district court, respondents argued that they had extended a loan modification offer, which appellant rejected. The mediator's statement did not find any lack of authority, and affirmatively stated that the parties negotiated in good faith. Thus, the district court's determination that respondents participated in the mediation process in good faith through a representative with the requisite authority is supported by substantial evidence. Id.

Finally, appellant argues that the district court did not give her a full and fair hearing because it refused to let her present all the evidence she wished to introduce, and because the district court had allegedly made statements in an unrelated case that it was not inclined to judicially impose loan modifications. In judicial review of an FMP matter, the district court has wide discretion to conduct hearings “to the extent that the court deems necessary.” FMR 21(1) (2011) (amended and renumbered FMR 21(2) effective January 1, 2013). Having reviewed the transcripts, we conclude that the district court did not abuse its discretion in limiting the hearing. Further, we conclude that because the district court properly found that no sanctions were warranted, any argument concerning what sanctions the district court would or would not impose are irrelevant. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Saitta

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<sup>1</sup>We have considered appellant’s remaining arguments and conclude that they do not warrant reversal.

cc: Eighth Judicial District Court Dept. 14  
Mildred Walker  
Smith Larsen & Wixom  
Tiffany & Bosco, P. A.  
Eighth District Court Clerk