

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIA F. SMITH; AND MMBK TRUST,
Appellants,
vs.
BAC HOME LOANS SERVICING, LP;
AND RECONTRUST COMPANY, INC.,
Respondents.

No. 60002

FILED

JUN 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *K. Malone*
DEPUTY CLERK

ORDER APPROVING STIPULATION TO PARTICIPATE IN
FORECLOSURE MEDIATION PROGRAM AND DISMISSING APPEAL


This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.


The parties have filed a stipulation in this appeal agreeing to voluntarily opt into the Foreclosure Mediation Program (FMP), and seeking an order permitting them to do so, and instructing the FMP administrator to process the application for a mediation filed in July 2011 and appoint a mediator. The parties further stipulated to withdraw the Foreclosure Mediation Program Certificate issued in the underlying case.

At issue in this matter is whether the subject property is owner-occupied and eligible for the FMP. An owner-occupier property includes the trustee of a revocable or irrevocable trust if the trustor or a beneficiary of that trust resides on the subject property. FMR 7(1). After a review of the record, it appears that the subject property is in the res of appellant MMBK Trust, that Lance Posner is the trustee of the trust, and that appellant Maria Smith, the occupant of the property, is the beneficiary of that trust. Thus, under FMR 7(1), Lance Posner may seek

to mediate under the auspices of the FMP. Here, respondents have stipulated and agreed to mediate with appellants. Accordingly, we approve the stipulation, and direct the FMP administrator to process the previously filed application and appoint a mediator, and that FMP Certificate No. 2012-04-26-0019 be voided. Because we direct the administrator to appoint a mediator and order the FMP Certificate voided, there is no longer a case or controversy in this matter and we therefore order the appeal dismissed.¹

It is so ORDERED.


_____, J.
Pickering


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Robert W. Lueck, Esq.
Akerman Senterfitt/Las Vegas
Eighth District Court Clerk
Foreclosure Mediation Program Administrator

¹The parties stipulated that upon receipt of this order and acceptance into the FMP, they would further stipulate to dismiss this appeal. Because we order the administrator to accept the application and to schedule a mediation, no further stipulation is necessary.

In light of this order, we deny as moot respondents' motions for extensions of time to file their answering brief and their motion to stay briefing.