IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. LYCANS, AN UNMARRIED MAN; AND TOBIAS ROSASCHI, AN UNMARRIED MAN,
Appellants,
vs.
IBM LENDER BUSINESS PROCESS SERVICES, INC.; FEDERAL NATIONAL MORTGAGE ASSOCATION (FANNIE MAE); AND QUALITY LOAN SERVICE CORPORATION,
Respondents.

No. 60076

FILED

FEB 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

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.

In an appeal from a district court order granting or denying judicial review in an FMP matter, this court defers to the district court's factual determinations and reviews de novo the district court's legal determinations. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. ___, ___, 286 P.3d 249, 260 (2012). 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 person. NRS 107.086(4) and (5) (2011); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1278-79 (2011).

Appellants first contend that respondent IBM Lender Business Process Services, Inc., mediated in bad faith by failing to disclose the amount that respondent Fannie Mae paid to obtain ownership of

appellants' loan while still asserting Fannie Mae's right to seek a deficiency judgment. Nothing in the FMP statute or rules requires disclosure of this information, and the district did not clearly err in finding a lack of bad faith in this regard. *Edelstein*, 128 Nev. at ___, 286 P.3d at 260 (indicating that, absent clear error, a district court's factual determinations will not be disturbed).

Appellants next contend that the assignment produced by IBM was "void" because it did not recite the amount of consideration that Fannie Mae paid for the assignment. According to appellants, this failure to recite the consideration paid violates NRS 111.210. We disagree. NRS 111.210, part of Nevada's statute of frauds, applies to "contract[s] . . . for the sale of an[ ] interest in lands." NRS 111.210(1). A written assignment of a deed of trust, however, is not a contract, but is an instrument that sets forth the chain of title. A written assignment is therefore akin to a receipt, providing a written record of who is entitled to foreclose on secured property as a means of satisfying a borrower's obligation under a promissory note. *Cf. Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. ___, ___, 290 P.3d 249, 254 (2012) (indicating that an assignment's purpose is to complete the chain of title of the person seeking to enforce the note and to proceed with foreclosure). Thus, while a signed writing is required to transfer the beneficial interest in a deed of trust, *see* NRS 111.205, this writing does not need to recite consideration to accomplish its purpose. *See Leyva*, 127 Nev. at ___, 255 P.3d at 1279 (discussing the applicability of NRS 111.205 without reference to NRS 111.210). Accordingly, the district court properly determined that the deed of trust assignment produced by IBM was not "void" for failure to comply with NRS 111.210(1). *Edelstein*, 128 Nev. at ___, 286 P.3d at 260.

Appellants finally contend that IBM mediated in bad faith because it did not provide a Broker's Price Opinion (BPO) before the mediation.[1] As it was not clearly erroneous for the district court to determine that this shortcoming did not amount to bad faith, *Edelstein*, 128 Nev. at ___, 286 P.3d at 260, we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

cc: Hon. Patrick Flanagan, District Judge
Mark L. Mausert
McCarthy & Holthus, LLP/Las Vegas
McCarthy & Holthus LLP/Reno
Washoe District Court Clerk

[1]It is unclear from appellants' opening brief whether they are also challenging the content of the BPO. *See* NRAP 28(a)(8) (requiring an opening brief to contain a heading and a summary for each argument being made). In any event, the record demonstrates that the district court reviewed the BPO and determined that it substantially complied with the FMRs and NRS 645.2515. *See Markowitz v. Saxon Special Servicing*, 129 Nev. ___, ___, 310 P.3d 569, 572-73 (2013) (recognizing that substantial compliance with the FMP's directory rules is sufficient).