

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL MECENAS,
Appellant,
vs.
EVERBANK; AND REGIONAL
SERVICE CORPORATION,
Respondents.

No. 61856

FILED

DEC 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
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. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, 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).

Appellant's arguments on appeal have evolved significantly from, and in some instances bear no relation to, the arguments made in

his petition for judicial review.¹ Because this court's inquiry on appeal is limited to determining whether the district court abused its discretion in ordering the issuance of an FMP certificate, *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. ___, ___, 290 P.3d 249, 254 (2012), we address only the arguments made in appellant's petition for judicial review and the district court's treatment thereof. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Appellant first contended that a representative of the deed of trust beneficiary did not participate in the mediation. Appellant based this contention on the fact that the mediation participant identified herself as an employee of Everhome and not as an employee of the deed of trust beneficiary, respondent EverBank. Based on the documentation presented to the district court, it was not clearly erroneous for the district court to conclude that EverBank owned Everhome and that a representative of the deed of trust beneficiary therefore participated in the mediation.² *Edelstein*, 128 Nev. at ___, 286 P.3d at 260 (indicating that, absent clear error, this court will not reverse the district court's factual determinations). To the extent that appellant contends that the district court should not have permitted EverBank to provide supporting

¹For instance, despite having never asked the district court to conduct an evidentiary hearing, appellant contends on appeal that the district court erred in failing to conduct an evidentiary hearing.

²Appellant did not appear to dispute that EverBank wholly owned Everhome, but instead contended that it was unclear whether Everhome still existed as an independent entity or had instead been subsumed into EverBank. Because the mediation participant ultimately represented EverBank, this issue does not warrant reversal of the district court's order.

documentation after the mediation's conclusion, we disagree. The mediator expressly directed the parties to resolve the Everhome/EverBank discrepancy in the context of a petition for judicial review, and the Foreclosure Mediation Rules in place at the time of this mediation did not require premediation production of the documentation that appellant sought. See FMR 11(7)(c) (enacted and effective January 1, 2013).

Appellant also contended that EverBank mediated in bad faith. Specifically, appellant alleged that EverBank did not review his financial documents until the day of the mediation, and appellant further suggested that EverBank's justification for refusing to discuss loan modification options was pretextual. Based on the documentation submitted to the district court and the discussion at the show-cause hearing, the district court did not clearly err in concluding that EverBank reviewed appellant's documents before the mediation and that EverBank's justification for refusing to discuss modification options was not pretextual. *Edelstein*, 128 Nev. at ___, 286 P.3d at 260.

As appellant's remaining district court argument regarding a deficient document certification was not cogently pursued on appeal, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Hardesty J.
Hardesty

Cherry J.
Cherry

cc: Hon. Kathleen E. Delaney, District Judge
Crosby & Fox, LLC
Robinson Tait, P.S.
Silvestri Gidvani, P.C.
Eighth District Court Clerk