


IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. ZDERIC,  
Appellant,  
vs.  
HSBC BANK U.S.A, N.A., AS TRUSTEE  
OF JPMORGAN MORTGAGE TRUST  
2007-A2; JPMORGAN CHASE  
CUSTODY SERVICES; AND CAL-  
WESTERN RECONVEYANCE  
CORPORATION,  
Respondents.

No. 63127

**FILED**

FEB 13 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DISMISSING APPEAL IN PART, AFFIRMING IN PART,  
GRANTING SANCTIONS, AND REMANDING*

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).

The parties agree that, in light of the rescission of the notice of default that formed the basis for the underlying mediation, the issues regarding respondent HSBC Bank U.S.A., N.A.'s document production and

authority are moot.<sup>1</sup> *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. \_\_\_, \_\_\_, 266 P.3d 602, 606 (2011). Accordingly, we dismiss this appeal with regard to these issues.<sup>2</sup>

The only issue on appeal that has not been rendered moot is whether respondent HSBC mediated in bad faith. Appellant contends that HSBC mediated in bad faith because (1) it did not review appellant's financial information before the mediation, (2) it was unwilling to negotiate with appellant at the mediation, and (3) it failed to honor an agreement entered into at the mediation. Despite these alleged shortcomings, the record on appeal demonstrates that the parties continued to negotiate throughout the pendency of the judicial review process. As the district court was better situated than this court to evaluate the parties' conduct during this period, we cannot conclude that the district court clearly erred in finding a lack of bad faith on HSBC's part. *Edelstein*, 128 Nev. at \_\_\_, 286 P.3d at 260 (indicating that, absent clear error, a district court's factual determinations will not be disturbed). We therefore affirm the district court's decision to not impose sanctions on respondents.

We conclude, however, that sanctions are warranted for respondents' conduct of rescinding the notice of default without notifying appellant or this court. As appellant points out, because the rescission was recorded on the same day that appellant filed his notice of appeal, the

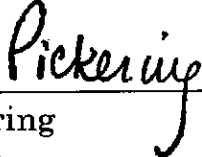
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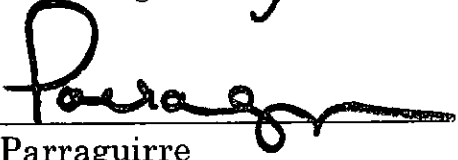
<sup>1</sup>The record reflects that HSBC was represented at the mediation by its loan servicer, nonparty JPMorgan Chase Bank, N.A.


<sup>2</sup>We decline appellant's invitation to consider these issues, as we are not persuaded that these issues will repeatedly evade appellate review. *Personhood Nev. v. Bristol*, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 572, 574 (2010).

entire appellate process has been rendered unnecessary.<sup>3</sup> Thus, we conclude that sanctions are warranted in an amount equal to the attorney fees and costs incurred by appellant to pursue this appeal. As calculation of this amount entails questions of fact, we remand this matter to the district court for determination of the appropriate sanction.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

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

cc: Hon. Kathleen E. Delaney, District Judge  
Crosby & Fox, LLC  
Smith Larsen & Wixom  
Eighth District Court Clerk

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<sup>3</sup>We recognize that appellant chose in his reply brief to pursue his arguments relating to HSBC's alleged bad faith even after learning that the notice of default had been rescinded. Nonetheless, we are satisfied by appellant's explanation that he would not have filed this appeal if he knew that issuance of an FMP certificate had been rendered impossible.