


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAROLD CORREOS,
Appellant,
vs.
DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS INDENTURED
TRUSTEE UNDER THE INDENTURE
RELATING TO IMH ASSETS CORP.,
COLLATERALIZED ASSET-BACKED
BONDS, SERIES 2005-5; OCWEN
LOAN SERVICING, LLC; AND LAW
FIRM LES ZIEVE,
Respondents.

No. 70736

FILED

JAN 30 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Kathleen E. Delaney, Judge.

Appellant Harold Correos participated in Nevada's Foreclosure Mediation Program (FMP) with respondents Deutsche Bank National Trust Company and Ocwen Loan Servicing, LLC. While the case was in the FMP, Correos submitted a request to the Securities and Exchange Commission (SEC), under the Freedom of Information Act (FOIA), for verification that the securitization trust for which Deutsche Bank held his loan documents as trustee—IMH Assets Corp., Collateralized Asset-Backed Bonds, Series 2005-5—was actively registered with that agency. The SEC's response indicated that it could not locate information responsive to Correos' request. Based on this response, Correos argued that IMH did not exist and could not own his loan and he

therefore refused to provide the documents that respondents requested to assess his eligibility for a loan modification. At the end of the mediation, the mediator found that Correos failed to exchange necessary documents with respondents, and the FMP administrator issued respondents a certificate of foreclosure.

Correos later filed a petition for judicial review arguing, among other things, that IMH did not exist and thus could not own his loan. In support of his argument, Correos requested that the district court take judicial notice of the SEC's response to his FOIA request. The district court took judicial notice of the fact that the SEC had apparently responded to a FOIA request Correos had submitted, but nonetheless denied his overall request for judicial notice. In so doing, the district court found that the SEC's response did not indicate that IMH did not exist or that respondents otherwise lacked standing to pursue foreclosure. The district court further found that respondents had met the FMP's document production requirements and that Correos' failure to produce the documents that respondents had requested could support the issuance of a foreclosure certificate. As a result, the district court denied the petition for judicial review and this appeal followed.

On appeal, Correos contends that respondents failed to satisfy the FMP's document production requirements as the representative at the mediation did not have original copies of his loan documents in her possession and instead only viewed copies of these documents on a computer. But the mediator did not find that respondents failed to comply with NRS 107.086(5)'s document production requirements, and the district court specifically found that those requirements were complied with.

Consistent with those findings, our review of the record reveals copies of Correos' promissory note and deed of trust, an allonge with the proper endorsements of the note, and sworn statements containing the necessary information to certify those documents as copies of the originals. See NRS 107.086(5); FMR 13(8) (setting forth the requirements to certify a document as a copy of an original for purposes of the FMRs).

The record also includes an assignment of Correos' deed of trust from the original beneficiary to IMH. And while Correos argues that respondents failed to bring a certified copy of this document to the mediation, because that document bears a certificate of acknowledgement before a notary, it is self-authenticating. See *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 697, 290 P.3d 249, 254 (2012) (explaining that a document bearing a certificate of acknowledgement before a notary carries a presumption of authenticity and is self-authenticating). Under these circumstances, we conclude that substantial evidence supports the district court's finding that respondents brought the required documents to the mediation. See NRS 107.086(5) (providing that the beneficiary of the deed of trust, or its representative, must produce an original or certified copy of the promissory note, deed of trust, and each assignment of those documents at the mediation); see also *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012) (recognizing that appellate courts defer to the district court's factual findings so long as they are not clearly erroneous and are supported by substantial evidence).

Correos nevertheless maintains that respondents did not establish their authority to foreclose, arguing that the district court should have taken judicial notice of the SEC's response to his FOIA request,

which he asserts demonstrates that IMH does not exist. Essentially, Correos contends that, in light of the SEC's response, respondents needed to establish that IMH legally existed in order to demonstrate that it owned his loan and had standing to pursue foreclosure, which he contends they failed to do.

But, as the district court found, the SEC's response does not indicate that IMH did not exist. To the contrary, that document merely indicates that the SEC could not locate information regarding IMH within its records. Correos construes the information provided by the SEC as demonstrating that IMH does not exist and thus cannot own, much less foreclose on, his loan. But even if we were to presume that the SEC's response necessarily demonstrates that IMH was not registered with that agency as Correos suggests, he has provided no explanation or argument as to why the fact that a securitization trust is not registered with the SEC necessarily means that the trust does not exist and cannot own or foreclose upon a loan. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (recognizing that an appellate court need not consider assertions that are not cogently argued). As a result, Correos has failed to establish that he was harmed by the district court's refusal to take judicial notice of the content of the SEC's response and thus we will not disturb that determination on appeal. *See* NRCP 61 (requiring the court, at every stage of a proceeding, to disregard errors that do not affect a party's substantial rights).

Lastly, Correos asserts that he had a constitutional and statutory right to withhold his financial records from respondents until they demonstrated their authority to foreclose. But Correos elected to

participate in the FMP. *See* NRS 107.086(3) (requiring a homeowner that receives a notice of default to affirmatively waive mediation); *see also* FMR 8(1)(b) (providing that a homeowner may participate in the FMP by enrolling upon receiving a notice of default). By doing so, Correos subjected himself to the FMP's document production requirements. *See* FMR 13(3), (5), (6) (setting forth deadlines by which the homeowner must respond to a beneficiary's document requests).


Moreover, while Correos contends that the district court improperly determined that he participated in the mediation in bad faith by refusing to exchange documents with respondents, the district court made no such finding. Indeed, the district court expressly determined that the FMRs do not specifically require homeowners to participate in good faith, while also noting that a homeowner's failure can lead to consequences, such as the issuance of a foreclosure certificate. The district court's reasoning as to these consequences makes sense, because a homeowner's failure to provide documents detailing the homeowner's financial condition makes it unlikely that a lender will be able to adequately evaluate the homeowner's eligibility for options, such as a loan modification, that may allow the homeowner to avoid foreclosure. *See* FMR 1(2) (explaining the FMP encourages the parties "to exchange information and proposals that may avoid foreclosure"); *see also* *Einhorn*, 128 Nev. at 691, 290 P.3d at 250 (recognizing that the FMP's purpose is to bring the parties "together to participate in a meaningful negotiation"). As a result, we conclude that no relief is warranted on this basis.

Based on the foregoing, Correos failed to demonstrate that the district court abused its discretion by denying his petition for judicial

review. *See Pasillas v. HSBC Bank USA*, 127 Nev. 462, 468, 255 P.3d 1281, 1286 (2011) (providing that a petition for judicial review that relates to a party's participation in a foreclosure mediation is reviewed for an abuse of discretion). Accordingly, we affirm the district court's denial of Correos' petition for judicial review.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Harold Correos
Severson & Werson/Irvine CA
Zieve, Brodnax & Steele, LLP
Eighth District Court Clerk