

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALBA TORRES,  
Appellant,

vs.

CHRISTIANA TRUST AS TRUSTEE OF  
ARLP SECURITIZATION TRUST 2015-1;  
AND CHRISTIANA TRUST AS  
TRUSTEE OF ARLP TRUST 2,  
Respondents.

No. 71359

**FILED**

MAR 29 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Alba Torres appeals from a district court order denying a petition for judicial review of a foreclosure mediation decision. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

After defaulting on her home loan, Torres elected to mediate under Nevada's Foreclosure Mediation Program (FMP). Fay Servicing, LLC, appeared at the mediation, through counsel, and produced various assignments to establish a chain of title for Torres' deed of trust from the original beneficiary to Christiana Trust as trustee for ARLP Trust 2 (Trust 2). Additionally, Fay Servicing produced a limited power of attorney that authorized it to take certain actions on behalf of Christiana Trust as trustee for Trust 2. Although Torres raised objections at the mediation with regard to whether Fay Servicing produced all the necessary assignments of the deed of trust and established its authority to participate in the mediation

on behalf of the beneficiary, the mediator found that the FMP's requirements had been satisfied. As a result, when the mediation ended unsuccessfully, the FMP administrator recommended that a foreclosure certificate issue.

Torres subsequently petitioned for judicial review, naming, as relevant here, Christiana Trust as trustee for Trust 2 and Christiana Trust as Trustee for ARLP Securitization Trust 2015-1 (Trust 2015-1). In support of her petition, Torres provided documentation purportedly demonstrating that Christiana Trust as trustee for Trust 2015-1 had acquired her deed of trust. And based on that documentation, Torres argued that a foreclosure certificate should not issue because Fay Servicing did not produce an assignment of the deed of trust to Trust 2015-1 or documentation to show that it had authority to appear on that entity's behalf. Respondents opposed Torres' petition on both grounds. The district court found that Christiana Trust was the beneficiary of the deed of trust, regardless of whether that instrument was owned by Trust 2 or Trust 2015-1. On that basis, the district court concluded that Fay Servicing produced sufficient documentation at the mediation to establish the chain of title for the deed of trust and its authority to mediate on behalf of Christiana Trust, and it denied Torres' petition. This appeal followed.

On appeal, Torres contends that Trust 2015-1 was the beneficiary of her deed of trust and that one or more assignments necessary to complete the chain of title for the deed of trust to that entity were missing

at the mediation. See NRS 107.086(5)<sup>1</sup> (requiring the beneficiary, or its representative, to produce each assignment of the deed of trust); FMR 13(7)(a)<sup>2</sup> (providing that the same must be produced at least 10 days prior to the mediation). Respondents effectively concede that, at the time of the mediation, Torres' deed of trust had been transferred from Christiana Trust as trustee for Trust 2 to Christiana Trust as trustee for Trust 2015-1. But respondents assert that, in both cases, Christiana Trust was the beneficiary and that its status as such was sufficiently established for purposes of the FMP's document production requirement by the prior assignment to Christiana Trust as trustee for Trust 2.

When a deed of trust is assigned to a trustee of a mortgage backed security, the beneficial interest in that instrument is held by the mortgage backed security. See *Rheinschild Family Tr. v. Rankin*, No. 1:15-CV-00194-EJL, 2016 WL 1170945, at \*10-11 (D. Idaho March 24, 2016) (analyzing certain issues relating to an assignment of a deed of trust to a trustee of a mortgage backed security and treating the mortgage backed security as the holder of the beneficial interest in the deed of trust). Thus,

---

<sup>1</sup>NRS 107.086 was amended effective June 12, 2017, 2017 Nev. Stat., ch. 571, § 2, at 4091-96, but those amendments do not affect the disposition of this appeal, as they were enacted after the underlying mediation.

<sup>2</sup>The FMRs became effective on June 30, 2009, and have been amended and renumbered numerous times since. For clarity, the citations in the text are to the FMRs that went into effect on January 13, 2016, and were the FMRs in effect at the time the underlying mediation occurred.

under the assignment to Christiana Trust as trustee for Trust 2, Christiana Trust was only the trustee for the beneficiary identified therein, Trust 2. Likewise, the subsequent transfer of Torres' deed of trust to Christiana Trust as trustee for Trust 2015-1 placed the beneficial interest in that instrument in Trust 2015-1, as opposed to its trustee, Christiana Trust. Because Fay Servicing did not produce a corresponding assignment to demonstrate the transfer of the beneficial interest from Trust 2 to Trust 2015-1, the FMP's document production requirements were not satisfied.<sup>3</sup> And to the extent the district court found to the contrary, its finding was clearly erroneous. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012) (explaining that a district court's factual findings are given deference unless they are clearly erroneous and unsupported by substantial evidence).

Given respondents' concession that Torres' deed of trust was transferred to Christiana Trust as trustee for Trust 2015-1 and because that transfer placed the beneficial interest in the deed of trust in Trust 2015-1, that entity was required to participate in the mediation, even if only

---

<sup>3</sup>Insofar as respondents assert that this deficiency should be overlooked because Torres had notice of the transfer to Trust 2015-1 and later failed to review the documentation that Fay Servicing brought to the mediation, their argument fails as the FMP's document production requirement requires strict compliance. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 476, 255 P.3d 1275, 1279 (2011) (explaining that the requirements set forth in NRS 107.086 and the FMRs require strict compliance).

through a representative with authorization to appear on its behalf. *See* NRS 107.086(5) (requiring the beneficiary of the deed of trust, or its representative, to participate in the mediation); *see also* FMR 13(7)(d) (requiring a third party representative appearing at the mediation on behalf of the beneficiary to produce a copy of the agreement that authorizes it to appear at the mediation and negotiate on the beneficiary's behalf). In this regard, the parties do not dispute that Trust 2015-1 itself did not participate in the mediation. And Torres argues that Fay Servicing failed to produce sufficient documentation, at the time of the mediation, to establish its authority to appear on behalf of Trust 2015-1.

Having reviewed the only document that Fay Servicing produced at the mediation to establish its authority to participate in that proceeding, a limited power of attorney,<sup>4</sup> we agree with Torres that Fay Servicing was only authorized to take certain actions on behalf of Christiana Trust as trustee for Trust 2, as opposed to Trust 2015-1. We recognize that, in connection with Torres' petition for judicial review (PJR), respondents produced another limited power of attorney, which was drafted after the underlying mediation and which authorized Fay Servicing to take certain actions on behalf of Christiana Trust as trustee for Trust 2015-1. But insofar as respondents argue that their production of that document

---

<sup>4</sup>Although Fay Servicing also produced an authorization for counsel to appear at the mediation on its behalf, that document does not address whether Fay Servicing was authorized to take action on behalf of Trust 2015-1.


during the PJR proceedings was sufficient for purposes of the FMP, their argument is unavailing, as that document was untimely and did not establish Fay Servicing's authority to appear on behalf of Trust 2015-1 at the time of the mediation. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 476, 255 P.3d 1275, 1279 (2011) (explaining that the FMP's document production requirements require strict compliance). Thus, respondents failed to satisfy the FMP's participation or third-party-representation requirements. And insofar as the district court found to the contrary, its finding was clearly erroneous. *See Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260.

Given the foregoing, we conclude that the district court abused its discretion in denying Torres' petition for judicial review and directing that a foreclosure certificate issue. *See Leyva*, 127 Nev. at 480, 255 P.3d at 1281 (providing that denial of a petition for judicial review in foreclosure mediation is reviewed for an abuse of discretion). Accordingly, we must reverse and remand this matter for the district court to consider whether the respondents' failure to comply with the FMP's requirements alters its conclusion that they participated in the mediation in good faith and, if so, what sanctions are warranted for the failure to participate in good faith. *See Jacinto v. Pennymac Corp.*, 129 Nev. 300, 304, 300 P.3d 724, 727 (2013) (holding that if a party fails to mediate in good faith, the district court must, at "the bare minimum, sanction the offending party by not allowing an FMP certificate to issue"); *Pasillas v. v. HSBC Bank USA*, 127 Nev. 462, 470 255.

P.3d 1281, 1287 (2011) (providing factors for the district court to consider when sanctioning a party to an FMP mediation).

It is so ORDERED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge  
John Walter Boyer, Settlement Judge  
Crosby & Fox, LLC  
Zieve, Brodnax & Steele, LLP  
Eighth District Court Clerk

---

<sup>5</sup>Having reviewed Torres' remaining arguments, we conclude that they are either meritless or moot in light of our disposition of this appeal. And to the extent that respondents contend that a foreclosure certificate should nevertheless issue on the ground that Torres negotiated with regard to a loan modification in bad faith while they did so in good faith and that she is otherwise not entitled to a loan modification, their contention fails, as those grounds do not overcome the deficiencies addressed above. See *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 469, 255 P.3d 1281, 1286 (2011) (explaining that compliance with the requirements set forth in NRS 107.086(5) is a necessary predicate for the issuance of a foreclosure certificate).