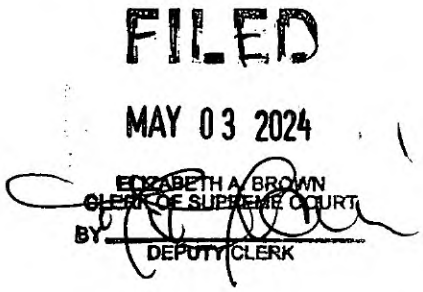
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN BABCOCK,
Appellant,
vs.
QUALITY LOAN SERVICING CORP.; AND US BANK TRUST, N.A. AS TRUSTEE FOR MEB LOAN TRUST II,
Respondents.

No. 85500-COA



ORDER OF REVERSAL AND REMAND

John Babcock appeals from a district court order denying a request for appropriate relief in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Chief Judge.

After Babcock defaulted on his home loan, he filed a petition for foreclosure mediation assistance, requesting to participate in Nevada's Foreclosure Mediation Program (FMP) and naming as defendants respondents US Bank Trust, N.A. (USB), and Quality Loan Servicing Corporation (QLSC)—respectively the beneficiary and trustee of the first deed of trust on the property.[1] Fifteen days before the mediation, attorney Kristin A. Schuler-Hintz produced documentation to establish her authority to negotiate a loan modification on behalf of USB at the mediation. The parties did not subsequently come to an agreement on a loan modification during the mediation, and the mediator later filed a mediator's statement

[1]Asserting that it was named in this matter solely in its capacity as trustee under the deed of trust, QLSC declared nonmonetary status pursuant to NRS 107.029 and did not participate any further in the action.

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in district court, recommending that the court direct the issuance of a foreclosure certificate and dismiss Babcock's petition for foreclosure mediation assistance.

Babcock then filed a request for appropriate relief, arguing that a foreclosure certificate should not issue and that he was entitled to attorney fees and costs as sanctions. For support, Babcock asserted that Schuler-Hintz failed to timely produce sufficient documentation to establish her authority to negotiate a loan modification on behalf of USB at the mediation and that, although she produced supplemental documents during the mediation, they were untimely and demonstrated she lacked the requisite authority. USB opposed that motion and, following a hearing, the district court entered an order denying Babcock's request for appropriate relief on the basis that the documents that Schuler-Hintz produced were timely and established her authority to negotiate at the mediation. This appeal followed.

On appeal, Babcock reiterates her position that Schuler-Hintz failed to timely produce sufficient documentation to establish her authority to negotiate on behalf of USB at the mediation. In this respect, Babcock contends that the only relevant document Schuler-Hintz timely produced prior to the mediation was the cover page to a "HELOC Purchase and Interim Servicing Agreement," which did not address who was authorized to negotiate for USB. Babcock also contends that, although Schuler-Hintz produced the cover page to a "Servicing Agreement" and an excerpt from the agreement at the mediation, the documents were untimely and effectively imposed severe restrictions on Schuler-Hintz's authority to negotiate for USB. USB contends that Babcock fails to acknowledge a limited power of attorney (LPA) that Schuler-Hintz produced prior to the

mediation, which USB maintains established her authority to negotiate a loan modification at the mediation on behalf of USB.

To obtain the foreclosure certificate that is generally needed to foreclose on owner-occupied housing, the beneficiary of the deed of trust must: (1) attend the mediation, (2) participate in good faith, (3) bring the required documents, and (4) if attending through a third-party representative, have a person present with authority to modify the loan or have access to such a person. NRS 107.086(1), (2)(e), (5), (6);[2] *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 513, 286 P.3d 249, 255 (2012). FMR 13(7)(d) expands on the document production requirement, providing that, at least 10 days prior to the mediation, the third-party representative "must produce a copy of the agreement, or relevant portion thereof, which authorizes the third party to represent the beneficiary at the mediation and authorizes the third party to negotiate a loan modification on behalf of the beneficiary of the deed of trust." If the foregoing requirements are not satisfied, then "the bare minimum sanction is that an FMP certificate must not issue." *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 304, 300 P.3d 724, 727 (2013). In an FMP matter, we defer to the district court's factual findings and review its decision regarding the imposition of sanctions for an abuse of discretion, but we review its legal conclusions de novo. *Id.*; *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 468, 255 P.3d 1281, 1286 (2011).

Here, fifteen days before the underlying mediation, Schuler-Hintz produced the LPA, wherein USB appointed its servicer, Select Portfolio Servicing, Inc. (SPS), as its attorney-in-fact; authorized SPS to

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[2]Although NRS 107.086 was amended effective July 1, 2023, we apply the version of that statute that went into effect on October 1, 2019, since it was the version that was in effect at the time of the underlying mediation.

execute documents in connection with the performance of certain enumerated tasks to the extent "required or permitted under the terms of the related servicing agreements;" and further authorized SPS to delegate its powers under the related servicing agreements. At the same time, Schuler-Hintz produced an authorization form in which SPS authorized Schuler-Hintz's law firm, or its designee, to "discuss loss mitigation and settlement" on behalf of deed-of-trust beneficiaries in matters for which the firm had been retained.

Insofar as the parties are disputing whether the timely production of the foregoing documents was sufficient for purposes of FMR 13(7)(d) or whether Schuler-Hintz was also required to produce the related servicing agreement(s) within that rule's timeframe, we need not resolve that issue in light of the excerpt from the document styled as a "Servicing Agreement" that Schuler-Hintz belatedly produced at the mediation, which USB has held out as being applicable to SPS's servicing of Babcock's mortgage. That excerpt provides in relevant part as follows:

> [SPS] may, in its discretion, waive, modify or vary any term of any Mortgage Loan . . . if in [SPS's] reasonable and prudent determination such waiver [or] modification . . . is not materially adverse to the related Owner [of the covered mortgage]; provided, however, unless in accordance with the HMP program, [SPS] shall not permit any waiver or modification . . . that would change the Mortgage Interest Rate, forgive the payment . . . of any principal or interest payments, reduce the outstanding principal amount . . ., extend the final maturity date . . ., waive any prepayment penalty . . . or [perform] any other act that could reasonably be expected to affect materially and adversely the related Owner's interest.

While USB contends that the foregoing provision only restricts SPS's authority to negotiate loan modifications when the modification is in accordance with the HMP program, the provision had the opposite effect. Although the excerpt initially provides SPS with broad authority to negotiate loan modifications, it proceeds to severely restrict that authority unless it is exercised in accordance with the HMP program.[3] And USB specifically argues on appeal that Babcock's loan was not part of the HMP program.

Thus, the language quoted above, when taken together with USB's representation, demonstrates that SPS's authority to negotiate a loan modification under these circumstances was severely restricted. Moreover, because the LPA only authorized SPS to delegate its power under "servicing agreements," and USB has not produced any portion of an applicable servicing agreement that addresses loan modifications aside from the excerpt discussed above, we conclude that Schuler-Hintz's authority was restricted to a corresponding extent. As a result, Schuler-Hintz could not meaningfully participate in the mediation, and we therefore conclude that the FMP's requirement of good faith participation was not satisfied.[4] *See* NRS 107.086(6); *Markowitz v. Saxon Special Servicing*, 129

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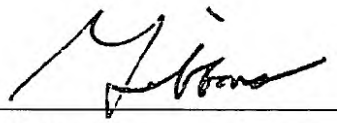
[3]The record before this court provides no indication as to what program this is referring to, but, regardless, USB argues that the loan at issue was not part of this program.

[4]To the extent that USB asserts the restrictions on Schuler-Hintz authority to negotiate were appropriate based on the nature of the loan notwithstanding the FMPs requirements, it has not directed this court's attention to any legal authority to support that proposition. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues unsupported by citation to relevant legal authority).

Nev. 660, 666, 310 P.3d 569, 572 (2013) (explaining that "[t]he purpose of FMP mediation is to bring the parties together to participate in a *meaningful negotiation* to resolve the dispute" (emphasis added) (internal quotation marks omitted)); *Deutsche Bank Nat'l Tr. Co. v. Hurt*, Nos. 83863-COA & 84650-COA, 2023 WL 7289671, at *3 (Nev. Ct. App. Nov. 3, 2023) (Order Affirming (Docket No. 83863-COA) and Vacating (Docket No. 84650-COA)) ("In order to mediate in good faith and have the mediation be meaningful, a representative's authority to modify a loan cannot be limited to prohibit all changes to the mortgage rate, principal balance, and final maturity date . . . ."). Accordingly, under these circumstances, we necessarily reverse the order denying Babcock's request for appropriate relief and remand for the district court to deny the issuance of a foreclosure certificate and consider whether further sanctions are warranted. *See Jacinto*, 129 Nev. at 304, 300 P.3d at 727.

It is so ORDERED.[5]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[5]Insofar as the parties raise arguments that are not specifically addressed in this order, we conclude they either need not be reached in light of our disposition or do not present a basis for relief.

cc: Hon. Jerry A. Wiese, Chief Judge
Black & Wadhams
McCarthy & Holthus, LLP/Las Vegas
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk