


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF FORECLOSURE  
MEDIATION FOR KIRK C. BAXTER

No. 88345-COA

KIRK C. BAXTER,  
Appellant,  
vs.  
THE BANK OF NEW YORK MELLON  
A/K/A THE BANK OF NEW YORK,  
Respondents.

FILED  
MAR 28 2025  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kirk Baxter appeals from a district court order dismissing a petition for foreclosure mediation assistance. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

In 2006, Baxter purchased real property. To facilitate the purchase, Baxter executed a promissory note and a deed of trust that secured the note. The note was executed in favor of the original lender. The deed of trust designated Mortgage Electronic Registration Systems, Inc. (MERS), as the beneficiary, acting as nominee for the lender.

The note was subsequently endorsed in blank, making it payable to the bearer. MERS later executed an assignment of the deed of trust to respondent the Bank of New York Mellon (New York Mellon) and that assignment was recorded. NewRez LLC d/b/a as Shellpoint Mortgage Servicing (Shellpoint) also became the servicer of the mortgage loan.

In 2023, the trustee of the deed of trust recorded a notice of default and election to sell, in which it stated that Baxter failed to meet his obligations under a note secured by a deed of trust. Baxter subsequently filed a petition for foreclosure mediation assistance in which he requested to participate in Nevada's Foreclosure Mediation Program (FMP).

This matter proceeded to mediation. New York Mellon appeared at the mediation remotely via counsel. A representative from Shellpoint also appeared at the mediation. Baxter appeared at the mediation in person and with counsel. The parties did not come to an agreement on a loan modification at the mediation, and the mediator later filed a mediator's statement in district court, recommending that the court direct the issuance of a foreclosure certificate and dismiss Baxter's petition for foreclosure mediation assistance.

In her statement, the mediator stated that New York Mellon provided emails depicting the original deed of trust, the original promissory note, and the assignments of those documents. The mediator therefore concluded that New York Mellon produced the required documents. The mediator also did not indicate that New York Mellon or its representatives failed to attend the hearing or that its representatives did not have authority to modify the loan. In addition, the mediator did not find that either party participated in the mediation in bad faith.

Baxter thereafter filed a request for appropriate relief under FMR 20(2) arguing that New York Mellon did not participate in the mediation in good faith, it failed to bring the necessary documentation to the mediation, and that the persons who appeared at the mediation lacked

authority to act on behalf of New York Mellon. Baxter also requested sanctions based on the foregoing issues. New York Mellon disagreed with those points in their response and requested the district court to dismiss the petition.

The district court later entered a written order denying Baxter's request for relief and dismissed the petition for foreclosure mediation. The court noted the mediator found that New York Mellon emailed to Baxter the required documentation, including the deed of trust, the assignments of the deed of trust, and the promissory note. The court further found the documentation in the record was sufficient to satisfy the Foreclosure Mediation Rules. The court also found that all additional arguments raised by Baxter lacked merit and that sanctions were not warranted. In addition, the district court transmitted a copy of the order dismissing the petition to Home Means Nevada, Inc. for it to issue a foreclosure certificate. *See* NRS 107.086(8). This appeal followed.

Baxter challenges the district court's decision to dismiss his petition for foreclosure mediation assistance and to reject his request for sanctions. 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 and will affirm its factual findings so long as they are not clearly erroneous and are supported by substantial evidence. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012). Substantial evidence is evidence that "a sensible person may accept as adequate to sustain a judgment." *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). However, this court reviews the district court's

legal conclusions de novo. *Edelstein*, 128 Nev. at 522, 286 P.3d at 260. To obtain the foreclosure mediation 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); FMR 12(1)(a); *Edelstein*, 128 Nev. at 513, 286 P.3d at 255.

First, Baxter argues that New York Mellon failed to satisfy the FMP's document production requirements as the representative at the mediation did not bring the "wet ink" originals to the mediation. But the mediator did not find that New York Mellon failed to comply with the document production requirements. Rather, the mediator found New York Mellon appeared at the mediation remotely and produced the original documents via email. The district court reviewed the documents contained within the record and specifically found that New York Mellon complied with the FMP's production requirements.

Consistent with those findings, our review of the record reveals it contains the deed of trust, the assignments of the deed of trust, Baxter's promissory note, and the proper endorsements of the note. *See* NRS 107.086(5); FMR 12(1)(a) (setting forth the documents the beneficiary is required to bring to a foreclosure mediation). Moreover, the deed of trust and the assignments of the deed of trust bear a certificate of acknowledgement before a notary and were therefore self-authenticating. *See Einhorn v. BAG 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 New York Mellon brought the required documents to the mediation. *See Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260.

Second, Baxter contends the people that attended the mediation lacked the authority to act on behalf of New York Mellon. Baxter asserts that a Shellpoint employee attended the mediation and he argues she did not work for New York Mellon and thus had no authority to act on behalf of the bank. The Foreclosure Mediation Rules provide that a representative may appear on behalf of a borrower at the mediation, but the representative generally must be either (1) an attorney licensed in Nevada, (2) a person licensed to provide services as described in NRS 645F.310, or (3) a U.S. Department of Housing and Urban Development approved housing counselor. FMR 12(b)(1)-(3). While the record indicates an employee of Shellpoint appeared at the mediation, the record also demonstrates that an attorney licensed in Nevada appeared at the mediation as the representative of New York Mellon. In addition, the attorney filed a declaration stating that he appeared at the mediation on behalf of New York Mellon. Further, the mediator did not find that New York Mellon failed to appear at the mediation or that its representative lacked the authority to modify the loan, and the district court denied Baxter's request for relief from the mediator's statement as to these issues. Under these circumstances, we conclude the district court did not abuse its

discretion by rejecting Baxter's argument. See *Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260.

Third, Baxter argues the district court abused its discretion by declining his request for the imposition of sanctions. Baxter appears to contend that sanctions were warranted because New York Mellon acted in bad faith, as he believes it did not bring the required documents to the mediation and the representatives lacked the authority to act on its behalf. A district court's decision regarding the imposition of sanctions is reviewed for an abuse of discretion. *Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260. "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted).


As explained previously, the record supports the district court's decision to reject Baxter's contentions that New York Mellon failed to satisfy the FMP's document production requirements and that the persons that appeared at the mediation lacked the authority to represent it. In addition, the mediator did not find that New York Mellon acted in bad faith at the mediation. The district court reviewed the documents provided by the parties and Baxter's request for sanctions, and it found that sanctions were not appropriate.

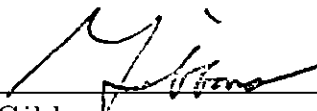
The district court's factual findings are supported by substantial evidence and Baxter does not demonstrate that the court's decision to deny his request for sanctions was arbitrary or capricious or that it exceeded the bounds of law or reason. Accordingly, we discern no abuse


of discretion in the district court's decision to deny Baxter's request for sanctions. *See Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260.

In light of the foregoing analysis, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Bulla

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Nathan Tod Young, District Judge  
Kirk C. Baxter  
Tiffany & Bosco, P.A./Las Vegas  
Douglas County Clerk

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<sup>1</sup>Insofar as Baxter raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.