

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE A. MOLNAR,  
Appellant,  
vs.  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
Respondent.

No. 56138

**FILED**

OCT 18 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

Appeal from a district court order denying a petition for judicial review in a foreclosure mediation action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

This appeal grows out of the Foreclosure Mediation Program (FMP). The district court found that the respondent failed to attend the mediation but that its failure was inadvertent, due to lack of notice, not bad faith. Orally, the district court declined sanctions and ordered the parties to proceed with a rescheduled mediation. The district court's written order, however, directs that, "absent a timely appeal, a Letter of Certification shall enter." The homeowner, Michelle Molnar, appeals.

On appeal, Molnar focuses on sanctions and issues relating to production of documents and party authority.<sup>1</sup> She does not address the more obvious and immediate issue of the discrepancy between the district

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<sup>1</sup>Although the briefs make reference to BAC Home Loans Servicing, LP, this entity did not move to intervene; nor did either side move to add or substitute this entity as a party to this appeal or to dismiss respondent Mortgage Electronic Registration Systems, Inc. We therefore do not address the unsupported assertions each side makes as to the status of BAC Home Loans Servicing, LP.


court's oral and written orders. In their briefs, both sides debate whether the other side has anticipatorily repudiated obligations owed under the FMP statutes and rules. Until mediation occurs, these arguments are speculative and premature. The district court did not find, and the record does not support a finding, that anything more should occur in this case than rescheduling the mediation that has yet to occur.

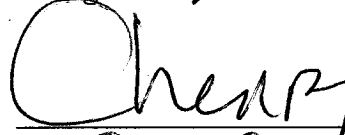
Despite her briefs' focus on sanctions, Molnar "[a]lternatively . . . requests this matter be remanded for a new mediation." While we affirm the district court's determination that the respondent missed the first mediation through inadvertence, not bad faith, we reverse its written order directing the letter of certification to issue, and remand. On remand, the district court may clarify whether Molnar withdrew or waived her election to mediate. If she did not, the parties should be directed to proceed with a rescheduled mediation, as the district court's original oral order required. We note that Molnar is not entitled to impose preconditions on the rescheduled mediation that the FMP statutes and rules do not support. At the same time, the rescheduled mediation should proceed in accord with the FMP statutes and rules, as interpreted by this court in Pasillas v. HSBC Bank USA, 127 Nev. \_\_\_, 255 P.3d 1281 (2011), and Leyva v. National Default Servicing Corp., 127 Nev. \_\_\_, 255 P.3d 1275 (2011).

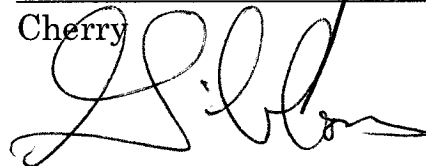
Accordingly, we


ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and REMAND this matter to the district court for proceedings consistent with this order.

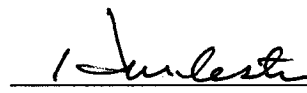
  
Saitta, C.J.

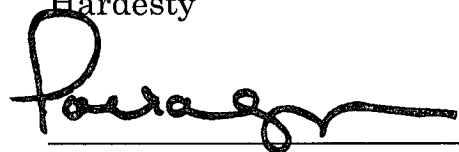
  
Douglas, J.

  
Cherry, J.

  
Gibbons, J.

  
Pickering, J.

  
Hardesty, J.

  
Parraguirre, J.

cc: Hon. Patrick Flanagan, District Judge  
Mark L. Mausert  
Akerman Senterfitt/Las Vegas  
Washoe District Court Clerk