

THE SUPREME COURT OF THE STATE OF NEVADA

CAROLINE J. KARL,

Appellant,

vs.

HSBC BANK, USA, NA, AS TRUSTEE  
FOR MERRILL LYNCH ALTERNATIVE  
NOTE ASSET TRUST, SERIES 2007-A3,  
AN UNKNOWN ENTITY; AMERICA'S  
SERVICING COMPANY, AN  
UNKNOWN ENTITY; AND QUALITY  
LOAN SERVICE CORPORATION, A  
FOREIGN ENTITY,  
Respondents.

No. 57561

**FILED**

JAN 20 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING

This is an appeal from a district court order denying judicial review in a foreclosure mediation matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program, appellant Caroline J. Karl filed a petition for judicial review seeking sanctions against respondents HSBC Bank, USA, NA, America's Servicing Company (ASC), and Quality Loan Service Corporation (Quality). Karl contended that HSBC, ASC, and Quality violated NRS 107.086(4)'s requirements by failing to: (1) provide the proper documentation, (2) provide a proper representative, and (3) negotiate in good faith. The district court found to the contrary, denied Karl's petition for judicial review, and ordered the Foreclosure Mediation Program to issue a certificate to allow the foreclosure to be completed.

Karl now appeals, contending (1) HSBC did not provide all the required documents, which constitutes bad faith; and (2) a proper representative did not attend the mediation.<sup>1</sup> For the reasons set forth below, we affirm in part, reverse in part, and remand the district court's order denying judicial review. Specifically, we take issue with the district court's finding that HSBC provided proper documentation at the mediation.

Because the parties are familiar with the facts and procedural history in this case, we do not recount them further except as is necessary for our disposition.

#### Standard of review

This court reviews a district court's factual determinations for clear error, Valladares v. DMJ, Inc., 110 Nev. 1291, 1294, 885 P.2d 580, 582 (1994), and its legal determinations de novo, Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). Absent factual or legal error, the choice of sanction, if any, in an FMP judicial review proceeding is committed to the sound discretion of the district court. Pasillas v. HSBC Bank USA, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1281, 1287 (2011).

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<sup>1</sup>Karl also argues that ASC fabricated the assignment of the deed of trust to HSBC and that it received a cease and desist order as an unlicensed collection agency, and thus, ASC's actions were void. Because Karl did not properly raise these issues before the district court, we do not address them on appeal. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

HSBC failed to provide the required documentation

To obtain a foreclosure certificate, it is mandatory that a beneficiary of a deed of trust or its representative “(1) attend the mediation, (2) mediate in good faith, (3) provide the required documents, and (4) have a person present with authority to modify the loan or access to such a person.” Id. at \_\_\_, 255 P.3d at 1284; see Leyva v. National Default Servicing Corp., 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1275, 1276 (2011) (requiring strict compliance with NRS 107.086’s requirements). A letter certifying the mediation cannot be entered until all the requirements of NRS 107.086 are met. Pasillas, 127 Nev. at \_\_\_, 255 P.3d at 1286. If the homeowner petitions the district court for judicial review, the court may impose sanctions against the “beneficiary of the deed of trust or the representative as the court determines appropriate” if any one of these four requirements is not satisfied. NRS 107.086(5).

Karl contends that HSBC failed to provide the documents required under NRS 107.086(4). We agree. NRS 107.086(4) requires that the beneficiary provide “the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note.” The record lacks clarity as to whether HSBC provided all the proper documentation.<sup>2</sup> The only evidence provided is that the mediator

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<sup>2</sup>The record reflects that the original payee of the promissory note and beneficiary of the deed of trust was Universal American Mortgage Company of California. The note securing the deed of trust was negotiated and was made payable to First National Bank of Nevada. However, the beneficial interest of the deed of trust was assigned to Mortgage Electronic Registration Systems, Inc. (MERS). Although MERS assigned the beneficial interest of the deed of trust to HSBC, the  
*continued on next page . . .*

did not note missing documents on the mediator statement. The documents in the appellate record, however, fail to show whether HSBC established that it was the proper beneficiary that provided the required documents. Thus, we conclude that the district court abused its discretion in determining that the necessary documents were provided.<sup>3</sup> Accordingly we,

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court to clarify its findings regarding the sufficiency of the


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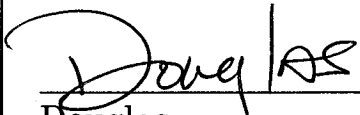
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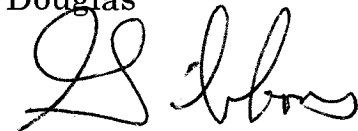
promissory note and deed of trust certifications were executed by Wells Fargo Home Mortgage, not HSBC.

<sup>3</sup>Karl also contends that she did not waive her right to object to the adequacy of HSBC's documents by negotiating at the mediation. Neither Karl nor HSBC raised the issue before the district court; thus, we will not address this issue. See Old Aztec Mine, 97 Nev. at 52, 623 P.3d at 983.

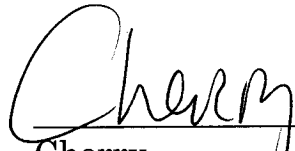
documents produced by HSBC at the mediation and whether sanctions are appropriate.<sup>4</sup>

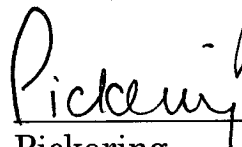
  
Saitta, C.J.

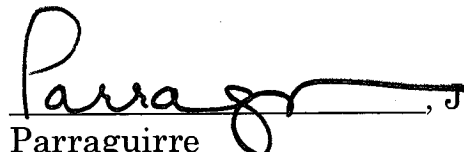
  
Douglas, J.

  
Gibbons, J.

  
Hardesty, J.

  
Cherry, J.

  
Pickering, J.

  
Parraguirre, J.

cc: Hon. Patrick Flanagan, District Judge  
Terry J. Thomas  
Snell & Wilmer, LLP/Las Vegas  
McCarthy & Holthus, LLP/Las Vegas  
Washoe District Court Clerk

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<sup>4</sup>We affirm the district court's finding that HSBC's counsel was a proper representative at the mediation.