

IN THE SUPREME COURT OF THE STATE OF NEVADA

MYRNA ODWAK,  
Appellant,  
vs.  
BAC HOME LOANS SERVICING, LP  
F/K/A COUNTRYWIDE HOME LOANS  
SERVICING, LP,  
Respondent.

No. 58054

**FILED**

SEP 25 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malone*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (FMP), appellant Myrna Odwak filed a petition for judicial review in district court. Odwak is the beneficiary of the Annabelle Brasler Trust (the Trust) that owns the subject property. She contended, among other things, that not all assignments had been provided, and it was unclear who the current beneficiary of the deed of trust was at mediation. The district court denied the petition without an evidentiary hearing and ordered that a foreclosure certificate be issued. This appeal followed. As explained below, we reverse and remand.

This court reviews a district court's decision regarding sanctions in the FMP for an abuse of discretion. Pasillas v. HSBC Bank USA, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1281, 1286 (2011). This court reviews a district court's factual determinations deferentially, Ogawa v. Ogawa, 125

Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that a “district court’s factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence”), 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 in an FMP judicial review proceeding is committed to the sound discretion of the district court. Pasillas, 127 Nev. at \_\_\_, 255 P.3d at 1287.

To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation; (2) participate in good faith; (3) bring the required documents; and (4) if attending through a representative, have a person present with authority to modify the loan or access at all times to such a person. NRS 107.086(4)-(5); Pasillas v. HSBC Bank USA, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1281, 1286 (2011); see also Leyva v. National Default Servicing Corp., 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is necessary). NRS 107.086(4) states that the deed of trust beneficiary or its representative “shall bring to the mediation 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.”

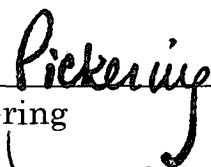
Here, the deed of trust identified Bank of America as the beneficiary. At the mediation, Bank of America was represented by its servicer respondent BAC Home Loans, whose representative allegedly asserted that an entity called CIG was the “investor.” Upon making this assertion, BAC’s representative refused to answer any further questions regarding CIG or its relationship to the deed of trust. The record on

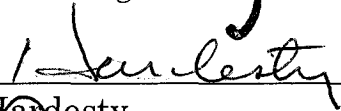
appeal includes no assignments of the deed of trust, but the note bears an endorsement that is blank.

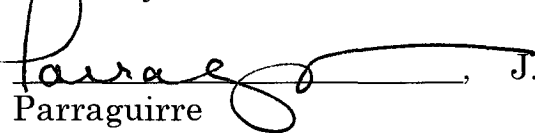
On appeal, Odwak argues, in part, that the district court erred in determining that she did not meet her burden of proof to show that CIG was a separate entity, which necessitated an assignment of the deed of trust. BAC contends that CIG is an internal division of the named beneficiary, Bank of America, which obviates the need for an assignment of the deed of trust. After review of the record on appeal and considering the arguments of counsel, it is unclear whether the deed of trust was assigned. BAC's reference at the mediation to CIG, followed by its refusal to answer any further questions regarding that entity, and coupled with the note's endorsement in blank, implies that the note may have been transferred and creates uncertainty as to whether the deed of trust was also assigned. Accordingly, we conclude that the district court abused its discretion in failing to conduct an evidentiary hearing. We reverse the district court's order and remand this matter to the district court.

On remand, the district court shall conduct an evidentiary hearing to determine (1) CIG's status and its relation, if any, to the instant note and deed of trust; (2) whether the deed or note has been assigned or transferred; and (3) in what capacity Bank of America's representative appeared at the mediation

It is so ORDERED.

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

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