

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY T. LYNN; AND SUZANNE M.
LYNN,
Appellants,
vs.
BAC HOME LOANS SERVICING, LP
F/K/A COUNTRYWIDE HOME LOANS
SERVICING, LP; THE BANK OF NEW
YORK MELLON F/K/A THE BANK OF
NEW YORK, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS TRUSTEE
FOR THE BENEFIT OF THE
CERTIFICATE HOLDERS OF THE
CWABS, INC. ASSET-BACKED
CERTIFICATES, SERIES 2006-3,
Respondents.

No. 59927

FILED

DEC 17 2013

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a Foreclosure Mediation Program (FMP) matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

In an appeal from a district court order granting or denying judicial review in an FMP matter, this court defers to the district court's factual determinations and reviews de novo the district court's legal determinations. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. ___, ___, 286 P.3d 249, 260 (2012). To obtain an FMP certificate, a deed of trust beneficiary must: (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 to such person. NRS 107.086(4) and (5) (2011); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1278-79 (2011).

Appellants first contend that respondent BAC Home Loans Servicing, LP, the loan servicer for respondent Bank of New York Mellon (BNYM), mediated in bad faith by refusing to disclose the amount BNYM paid to acquire ownership of appellants' loan. Nothing in the FMP statute or rules requires disclosure of this information, and the district court did not clearly err in finding a lack of bad faith in this regard. *Edelstein*, 128 Nev. at ___, 286 P.3d at 260 (indicating that, absent clear error, a district court's factual determinations will not be disturbed).

Appellants next contend that the assignment produced by respondents was "void" because it did not recite the amount of consideration that BNYM paid for the assignment. According to appellants, this failure to recite the consideration paid violates NRS 111.210. We disagree. NRS 111.210, part of Nevada's statute of frauds, applies to "contract[s] . . . for the sale of . . . an[] interest in lands." NRS 111.210(1). A written assignment of a deed of trust, however, is not a contract, but is an instrument that sets forth the chain of title. A written assignment is therefore akin to a receipt, providing a written record of who is entitled to foreclose on secured property as a means of satisfying a borrower's obligation under a promissory note. *Cf. Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. ___, ___, 290 P.3d 249, 254 (2012) (indicating that an assignment's purpose is to complete the chain of title of the person seeking to enforce the note and to proceed with foreclosure). Thus, while a signed writing is required to transfer the beneficial interest

in a deed of trust, see NRS 111.205, this writing does not need to recite consideration to accomplish its purpose. See *Leyva*, 127 Nev. at ___, 255 P.3d at 1279 (discussing the applicability of NRS 111.205 without reference to NRS 111.210). Accordingly, the district court properly determined that the deed of trust assignment produced by respondents was not “void” for failure to comply with NRS 111.210(1). *Edelstein*, 128 Nev. at ___, 286 P.3d at 260.

Appellants next contend that respondents’ document certification was deficient because it attested to possessing only a copy of the deed of trust assignment, not the original deed of trust assignment. This court addressed a similar shortcoming in *Einhorn*. There, the homeowner brought to the mediation a copy of an assignment that the homeowner’s counsel acknowledged he obtained from the county recorder’s office. *Einhorn*, 128 Nev. at ___, 290 P.3d at 254. Because the homeowner did not challenge that the copy he produced was an authentic copy of what his lawyer obtained at the recorder’s office, we concluded that “strict compliance with NRS 107.086(4)’s purposive requirements was achieved,” notwithstanding the lender’s failure to produce a certified copy of the original assignment. *Id.*

Similarly, the copy of the assignment that BAC Home Loans certified was in its possession bore information indicating that it had been obtained from the county recorder’s office. If appellants genuinely disputed the assignment’s authenticity, it was incumbent upon them to identify the genuine dispute that existed as to the document’s authenticity. Appellants failed to do so, and they likewise failed to establish that the mediation was otherwise prejudiced by the absence of

an original assignment. *Cf. id.* (“[S]trict compliance does not mean absurd compliance.”). As there was no factual or legal error on the district court’s part, *Edelstein*, 128 Nev. at ___, 286 P.3d at 260, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

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