

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELYN CHANDLER,
Appellant,
vs.
WELLS FARGO BANK, N.A.; US BANK
NATIONAL ASSOCIATION AS
TRUSTEE FOR WELLS FARGO ASSET
SECURITIES CORPORATION,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-AR2,
Respondents.

No. 60220

FILED

DEC 16 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).

Appellant first contends that respondent Wells Fargo Bank, N.A., the loan servicer for respondent US Bank National Association, mediated in bad faith by refusing to disclose the amount US Bank paid to acquire ownership of appellant's 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).

Appellant next raises two arguments with regard to the validity of a 2011 deed of trust assignment produced by Wells Fargo. First, appellant contends that the assignment was "void" because it did not recite the amount of consideration that US Bank paid for the assignment. Next, appellant contends that the assignment is either a "sham" or that another assignment is missing because, in a previous mediation, Wells Fargo produced a 2006 deed of trust assignment.

To the extent that these arguments were made in appellant's petition for judicial review and are properly preserved for appeal, we need not consider them because no assignment was necessary. Specifically, in *Edelstein*, we held that "a promissory note and a deed of trust are automatically transferred together unless the parties agree otherwise." 128 Nev. at ___, 286 P.3d at 257. We addressed, in *Edelstein*, a situation in which the deed of trust contained language appointing Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary, and we concluded that this was an agreement "otherwise." *Id.* at ___, 286 P.3d at 259. Here, however, the deed of trust contained no such agreement, meaning that a transfer of the note automatically transferred ownership of the deed of trust. *Id.* at ___, 286 P.3d at 257-58. Thus, when US Bank established that it had possession of the note,¹ which was endorsed in

¹Although the document certification indicated that Wells Fargo physically possessed the note, appellant does not appear to dispute that Wells Fargo is US Bank's loan servicer and agent. *See Edelstein*, 128 Nev.

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blank by Wells Fargo, US Bank effectively established that it was both the note holder, *see Leyva*, 127 Nev. at ___, 255 P.3d at 1280-81 (analyzing Article 3 of Nevada's Uniform Commercial Code and explaining how "holder" status can be attained), and the deed of trust beneficiary. *See Edelstein*, 128 Nev. at ___, 286 P.3d at 257-58.

As appellant's remaining arguments are beyond the scope of the FMP, 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
Tiffany & Bosco, P. A.
Washoe District Court Clerk

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at ___, 286 P.3d at 261-62 (explaining that, under Article 3 of the Uniform Commercial Code, when an agent of a secured party is in physical possession of a note, the secured party is deemed to be in actual possession of the note).