

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOYCELYN CUNANAN ESPANOLA,
Appellant,
vs.
ONE WEST BANK, FSB,
Respondent.

No. 61512

FILED

OCT 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angelina*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in a foreclosure mediation program (FMP) matter.¹ Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

In 2010, the parties attended a first mediation and reached a loan modification. Appellant did not make payments on the newly modified loan, however, contending she was prevented from doing so by respondent's failure to fulfill the terms of the agreement. Appellant did not file a petition for judicial review challenging respondent's post-mediation conduct. See FMR 21(1) (permitting a petition for judicial review to enforce agreements). Instead, on July 18, 2011, respondent initiated new foreclosure proceedings. On January 6, 2012, the parties attended a second mediation, in which they agreed to a short sale marketing period.

¹We direct the clerk of this court to amend the caption on this court's docket to conform to the caption of this order.

On May 29, 2012, appellant filed the underlying petition for judicial review, challenging respondent's conduct related to the first mediation. Respondent opposed the petition for judicial review, pointing out that a second intervening mediation had occurred, and arguing that appellant's petition was both untimely and was moot due to the agreement reached at the second mediation. The district court order did not substantively address the parties' various contentions concerning mootness, timeliness, or any of the substantive claims. Neither did the district court state whether the petition was dismissed or denied. Rather, the district court's sole conclusion was that the "petitioner failed to meet burden; case closed."

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 v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1287 (2011).

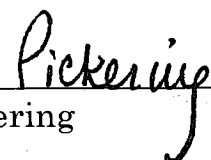
On appeal, appellant acknowledges that the FMP has already issued a certificate because appellant failed to comply with the terms of the second mediation agreement. Appellant states that she should have filed a petition for judicial review after respondent failed to comply with the terms of the first mediation agreement, but she attributes her failure

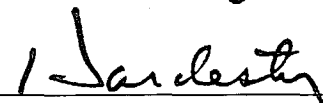
to do so to her former attorney who represented her throughout the mediation process.²

A signed agreement arising within the FMP is a valid enforceable settlement agreement, which waives claims of noncompliance with NRS 107.086 and the FMR. See Jones v. SunTrust Mortgage, Inc., 128 Nev. ___, ___, 274 P.3d 762, 764 (2012). Here, it is undisputed that the parties entered into a short sale agreement at the second mediation, and appellant does not challenge respondent's performance of the second mediation agreement. Thus, appellant's claims relating to respondent's performance of the first agreement and concerning respondent's alleged noncompliance with NRS 107.086 and the FMR are waived, and the district court reached the correct result in denying appellant's petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

²Any claim concerning the adequacy of her attorney's representation is not actionable by way of a petition for judicial review of a foreclosure mediation, and thus, did not present a basis for granting the petition.

cc: Chief Judge, The Eighth Judicial District Court
Lee A. Gates, Senior Judge
Joycelyn Cunanan Espanola
Luisito S. Espanola
Brooks Bauer LLP
Eighth District Court Clerk