

IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; FIRST AMERICAN
TRUSTEE SERVICING; AND
SETERUS, INC.,
Appellants,
vs.
CHAD WINTERS,
Respondent.

No. 62701

FILED

MAR 18 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a petition for judicial review in a Foreclosure Mediation Program (FMP) matter. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, 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).

On appeal, appellants acknowledge their failure at mediation to certify that they possessed respondent's original deed of trust. See NRS

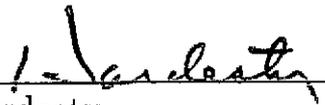
107.086(4) and (5) (2011) (requiring a lender to produce an original or certified copy of the original deed of trust); FMR 11(4) (2011) (explaining how to comply with this requirement). They contend, however, that under *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. ___, 290 P.3d 249 (2012), producing a copy of respondent's deed of trust that they obtained from the county recorder's office was sufficient to comply with the FMP statute and rules.¹ We disagree. In *Einhorn*, we concluded that an *assignment* of the deed of trust that the homeowner obtained from the county recorder's office was sufficient to comply with the FMP statute and rules. *Id.* at ___, 290 P.3d at 254. In reaching this conclusion, we recognized that, under the FMP statute and rules, an assignment's purpose is to complete the chain of title of the party seeking to proceed with foreclosure. *Id.* Thus, we determined that so long as an assignment existed and the homeowner was not challenging its authenticity, this purpose was achieved. *Id.*

In contrast to an assignment, however, it is not merely the existence of the original deed of trust that is important, but also possession of the original. See *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. ___, ___, 286 P.3d 249, 260-62 (2012) (recognizing that possession of the

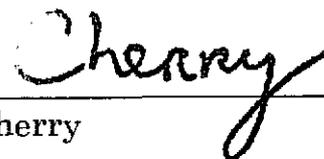
¹Appellants also contend that the district court improperly considered this issue because respondent did not raise it until his supplemental brief. We disagree. The district court expressly stated at the first show-cause hearing that it was ordering supplemental briefing because of its concern that appellants may not have produced the documentation necessary to establish their authority to foreclose. While the issue that the district court found to be dispositive was not explicitly addressed at the first hearing, appellants had ample opportunity to address it thereafter.

original note and deed of trust is necessary to establish a party's authority to foreclose). By obtaining a copy of respondent's deed of trust from the county recorder's office and bringing it to the mediation, appellants in no way demonstrated that they possessed the original deed of trust. NRS 107.086(4) and (5) (2011); FMR 11(4) (2011). Thus, the district court correctly determined that appellants failed to comply with the FMP statute and rules, and it properly refused to order the issuance of an FMP certificate. *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. ___, ___, 266 P.3d 602, 607 (2011) (“[D]enial of an FMP certificate follows automatically from a finding the statutory FMP requirements have been shirked...”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Kathleen E. Delaney, District Judge
Wright, Finlay & Zak, LLP/Las Vegas
Crosby & Fox, LLC
Eighth District Court Clerk