

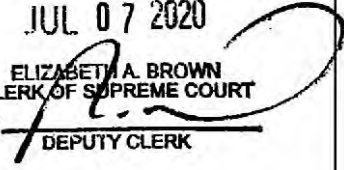
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IRIS JANE GROSS,  
Appellant,  
vs.  
U.S. BANK NATIONAL ASSOCIATION,  
Respondent.<sup>1</sup>

No. 78228-COA

**FILED**

JUL 07 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Iris Jane Gross appeals from a district court order denying a request for appropriate relief in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

After defaulting on her home loan, Gross elected to participate in Nevada's Foreclosure Mediation Program (FMP), and respondent U.S. Bank National Association (U.S. Bank), the beneficiary of the first deed of trust on the subject property, appeared at the mediation via counsel. The parties did not come to an agreement on a loan modification, and the mediator recommended that the district court dismiss Gross's petition for foreclosure mediation assistance and direct the issuance of a foreclosure certificate. Gross subsequently filed a request for appropriate relief under FMR 20(2) in the district court, arguing that U.S. Bank failed to comply with various FMP requirements. On that ground, she requested that the district court sanction U.S. Bank by declining to direct the issuance of a foreclosure certificate and by awarding Gross the attorney fees she incurred

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<sup>1</sup>We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

in connection with the request for relief. The district court denied Gross's request in a written order, and this appeal followed.

On appeal, Gross contends that U.S. Bank failed to strictly comply with FMR 13(7) because it failed to submit required documents to her at least 10 days before the mediation, and the district court therefore should have ordered the foreclosure certificate withheld. U.S. Bank counters that it substantially complied with FMR 13(7), that Gross failed to demonstrate she was prejudiced by the late submission, and that this court should therefore affirm the district court's decision. We agree with Gross.

We review a district court's decision regarding the imposition of sanctions in an FMP matter for an abuse of discretion. *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 468, 255 P.3d 1281, 1286 (2011). "[A] district court abuses its discretion if it does *not* order the FMP certificate withheld for noncompliance with the FMP requirements." *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 893, 266 P.3d 602, 607 (2011). Generally, rules are mandatory and require strict compliance when they set forth "a specific 'time and manner' for performance." *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310 P.3d 569, 572 (2013).

A deed of trust beneficiary must, among other requirements, participate in the mediation process in good faith, or else it is subject to sanctions. *See Jacinto v. PennyMac Corp.*, 129 Nev. 300, 304, 300 P.3d 724, 727 (2013); *see also* NRS 107.086(6). And FMR 13(7) provides that "[t]he beneficiary of the deed of trust must prepare and submit" certain documents to the homeowner "at least 10 days prior to the mediation." Because this rule "governs the time and manner for the deed of trust beneficiary to perform one of its duties to negotiate in good faith," it requires strict compliance. *Markowitz*, 129 Nev. at 665-66, 310 P.3d at 572-73 (concluding

that a materially similar prior version of the 10-day production requirement was a time and manner rule, which generally requires strict compliance); *see also Pasillas*, 127 Nev. at 467, 255 P.3d at 1285 (providing that “must,” as used in the FMRs’ document-production rule, is a synonym of “shall” and, therefore, denotes mandatory action). A failure to strictly comply with this mandatory rule necessarily means that a party did not participate in the mediation in good faith. *See Markowitz*, 129 Nev. at 666, 310 P.3d at 572-73 (noting that documents required to be submitted under the mandatory 10-day rule are “necessary . . . for the mediation and good-faith negotiations therein”).

Here, U.S. Bank concedes that it did not strictly comply with FMR 13(7) because it mailed the requisite documents to Gross only eight days before the mediation. And despite the lack of any apparent prejudice to Gross resulting from the late disclosure, we are constrained by the determination in *Markowitz* that strict compliance with the rule setting forth the time for submitting documents to the homeowner is required.<sup>2</sup> 129 Nev. at 666, 310 P.3d at 572-73. Accordingly, because there was never any

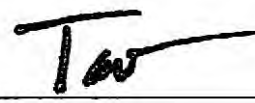
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<sup>2</sup>Although U.S. Bank alludes to—and we acknowledge—the fact that Gross also failed to comply with document-production rules, it does not argue or identify any authority providing that Gross’s noncompliance in any way excuses its own. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that the appellate courts need not consider claims unsupported by cogent argument or relevant authority). Similarly, although the FMRs and the governing statute (NRS 107.086) have been amended multiple times since the supreme court issued the opinions cited herein, U.S. Bank does not argue that those amendments in any way reflect a departure from the principles regarding strict compliance and sanctions set forth in the cited decisions.

dispute that U.S. Bank failed to strictly comply with FMR 13(7), the district court should have concluded that U.S. Bank failed to participate in the mediation in good faith, and it should have ordered the foreclosure certificate withheld. *See Jacinto*, 129 Nev. at 304, 300 P.3d at 727 (“If the district court finds noncompliance with these requirements, the bare minimum sanction is that an FMP certificate must not issue.”). We therefore reverse the district court’s order and remand this matter with instructions for the district court to grant Gross’s request for appropriate relief insofar as she requested that the foreclosure certificate be withheld.<sup>3</sup>

It is so ORDERED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>3</sup>Gross does not argue on appeal that the district court should have also granted her request for attorney fees, nor does she contend that further proceedings on that issue are necessary. Accordingly, that issue is waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (“Issues not raised in an appellant’s opening brief are deemed waived.”).

<sup>4</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they need not be reached given the disposition of this appeal.

cc: Hon. Linda Marie Bell, Chief Judge  
Iris Jane Gross  
ZBS Law, LLP  
Eighth District Court Clerk