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Nationstar Mortg. v. Rodriguez, 132 Nev. Adv. Op. 55 (July 28, 2016)

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PROPERTY: FORECLOSURE MEDIATION

Summary

The subsequent discovery of fraud does not provide good cause for overcoming a default of the 30-day window in which to file a petition for judicial review of foreclosure mediation.

Background

Respondent received a mortgage to purchase a home from First Horizon. When a notice of default was recorded, Bank of New York Mellon (BONY) was assigned the deed of trust. Nationstar Mortgage serviced Respondent's account. Respondent engaged in foreclosure mediation; no agreement was reached in the first two mediations. At the Oct. 6, 2011 final mediation, Nationstar (agent for BONY) presented an inaccurate, uncertified copy of the note identifying themselves as owner of the mortgage. When the final mediation failed, Respondent received a foreclosure notice.

BONY filed a complaint for judicial review. At a hearing for summary judgment on July 18, 2013, Respondent discovered the inaccuracy from the October 2011 mediation that named Nationstar as owners of the mortgage. Respondent filed a petition for judicial review on July 22, 2013. The district court excused the untimeliness and found that Nationstar knew the note was falsely presented, imposing a \$100,000 sanction. Nationstar appealed.

Discussion

Nevada's Foreclosure Mediation Rules require a petition for judicial review of mediation to be filed within 30 days of the mediation.² The Foreclosure Mediation Rules require compliance and the use of "shall" in FMR 23 serves to show the imposition of a duty. The language of FMR 23 is unambiguous, and the 30-day filing period is unyielding.

The Court rejected Respondent's argument that the FMR implies an allowance for discovery as having no precedential basis. A discovery rule has never been applied to any type of petition for judicial review. Even allowing for fraud as an excuse for untimeliness, respondent still waited more than 30 days between the day she discovered the fraud and the day she filed the petition.

Conclusion

Fraud will not excuse untimeliness of a petition for judicial review of foreclosure mediation, and the district court's order was reversed.

¹ By Patrick Caddick

² NEV. SUP. CT. F.M.R. 23. Note that at the time of the mediation conference, the same rule was codified as NEV. SUP. CT. F.M.R. 21(2) and is referred to as such in the opinion.