

A bank sued a borrower in federal district court for violating the terms of a mortgage agreement between the two parties. The borrower filed an answer that denied the bank's claim and contained a counterclaim alleging that the bank had engaged in predatory lending in violation of a federal statute. Neither party demanded a jury trial.

At the close of evidence, the judge orally stated his findings of fact and conclusions of law on the record. He found that the overwhelming evidence established that the borrower failed to make her monthly mortgage payments on several occasions during the past year. Based on this fact, the judge concluded that the borrower violated the terms of the mortgage agreement. The judge also concluded that the evidence was insufficient for him to find that the bank engaged in predatory lending. The judge then entered a written final judgment in favor of the bank.

The borrower properly filed an appeal challenging the judge's finding that she had failed to make the mortgage payments.

How will the appellate court likely rule?

- A. Affirm the judgment, because the judge is the final arbiter of facts in the absence of a jury.
- B. Affirm the judgment, because there was no clearly erroneous finding of fact.
- C. Reverse the judgment, because a jury must determine issues of fact.
- D. Reverse the judgment, because the findings of fact and conclusions of law were not in writing.

Explanation:

Appellate standards of review

Standard	Level of review	Applicability
De novo	<ul style="list-style-type: none">• No deference to trial judge's legal determination• Reverse if reasonably believe trial judge misinterpreted law	Pure legal issues, eg: <ul style="list-style-type: none">• conclusions of law• content of jury instructions
Clear error	<ul style="list-style-type: none">• Highly deferential to trial judge's factual findings• Reverse if no reasonable judge would have made this finding	Factual issues in <i>bench</i> trials, eg: <ul style="list-style-type: none">• credibility of witnesses• factual determinations
Substantial evidence	<ul style="list-style-type: none">• Highly deferential to jury's factual findings• Reverse if no reasonable jury would have made this finding	Factual issues in <i>jury</i> trials, eg: <ul style="list-style-type: none">• credibility of witnesses• jury's verdict
Abuse of discretion	<ul style="list-style-type: none">• Highly deferential to trial judge's discretionary decisions• Reverse only if decision was unreasonable/arbitrary	Discretionary rulings by judge, eg: <ul style="list-style-type: none">• grant/denial of new trial• admissibility of evidence

The Seventh Amendment right to a **jury trial** is waived when, as here, no written jury demand is served on the other parties within 14 days after service of the last pleading related to the jury issue. The parties must then proceed with a **bench trial**, during which the **judge** serves as the **finder of fact** and **interpreter of the law (Choice C)**. And after the close of evidence, the judge must provide—orally or in writing—findings of fact and conclusions of law on the record **(Choice D)**.

However, the trial judge is *not* the final arbiter of the law or facts **(Choice A)**. That is because an appellate court can review the trial judge's decision:

- for **clear error** (high deference) – where a judge's **findings of fact** will be reversed only if they were clearly erroneous such that no reasonable judge would have made them *or*
- **de novo** (no deference) – where a judge's **conclusions of law** will be reversed if the appellate court reasonably believes that the judge misinterpreted the applicable law.

And since there was overwhelming evidence that the borrower failed to make her monthly mortgage payments on several occasions, this finding of fact by the district court judge was not clearly erroneous. Therefore, the appellate court will likely affirm the district court's judgment.

Educational objective:

In a bench trial, the judge serves as the finder of fact and interpreter of law. On appeal, the judge's findings of fact are reviewed for clear error (high deference), while its conclusions of law are reviewed de novo (no deference).

References

- Fed. R. Civ. P. 52(a) (findings of fact and conclusions of law).