

ISSUE PRESENTED

This matter was brought by Petitioner pursuant to 32 M.R.S.A. § 13069(6)(C).

The issue presented to the Commission was whether the Petitioner has shown by a preponderance of the evidence that:

1. Respondent failed to report to the Commission in a timely manner his September 12, 2007 criminal conviction in violation of 32 M.R.S.A. § 13195.
2. Respondent demonstrated bad faith, untrustworthiness and improper dealings by failing to report in a timely manner the September 2003, July 2004 and September 2007 criminal convictions, in violation of 32 M.R.S.A. § 13067(1)(A), which was in effect at the time.
3. Respondent demonstrated bad faith by failing to repay a protested check and service charge after being notified that the check he had used to pay his license renewal fee had been returned for insufficient funds, in violation of 32 M.R.S.A. § 13067(1)(A), which was in effect at the time.

FINDINGS OF FACT

1. Petitioner's Exhibits 1 through 10 were admitted. Karen L. Bivins, Deputy Director of the Commission, testified that a copy of the complaint in this matter was mailed on February 21, 2008 to Fred L. Andrews at Investment Properties Real Estate, LLC, P.O. Box 10212, Portland, Maine 04101, which was the last agency address on file for Mr. Andrews with the Commission. It was mailed by certified mail, return receipt

requested and by regular first class mail. The return receipt was returned by the Postal Service as unclaimed after three attempts at delivery. The regular mail was not returned.

2. Ms. Bivins also testified that a copy of the complaint in this matter was mailed on February 21, 2008 to Fred L. Andrews at 58 Pitt Street, Portland, Maine 04101, which was the last home address on file for Mr. Andrews with the Commission. It was mailed by certified mail, return receipt requested and by regular first class mail. The return receipt was returned by the Postal Service as unclaimed after three attempts at delivery. The regular mail was not returned. Service of the notice of hearing was properly made.

3. Ms. Bivins testified that there had been no communication to the staff of the Commission from Mr. Andrews since the Notice of Hearing was mailed. Mr. Andrews had not signed in to the front desk at the Department of Professional and Financial Regulation on the hearing day prior to the beginning of the hearing. Ms. Bivins also testified that there were no written communications, telephone voice messages or e-mails from Mr. Andrews after the notice of hearing was mailed and up to the time of the hearing. An affidavit was admitted indicating that, according to the Department of Defense and Manpower Data Center, Mr. Andrews was not on active duty in the United States military service.

4. On August 8, 2005 the Commission approved a consent agreement ("the Agreement") between Petitioner and Respondent. In the Agreement Respondent acknowledged that he failed to report in a timely manner a September 2003 and a July 2004 criminal conviction for "Operating Under the Influence of Liquor" and that this failure constituted a violation of 32 M.R.S.A. § 13195. The Agreement required Respondent to pay a fine of \$500 and included the following term:

[T]he Director and the Commission agree that no further agency or legal action will be initiated against Andrews by the Commission based upon the facts described herein, except that in the event that Andrews does not fully comply with the terms of the Agreement, the Director or the Commission may consider the misconduct described above as evidence of a pattern of conduct in the event that similar misconduct allegations are brought against Andrews in the future. Additionally, the Director or the Commission may consider discipline should any further misconduct allegations be proven against Andrews in the future.

5. On July 30, 2007 the Commission received Respondent's designated broker license renewal application, along with his personal check number 111 in the amount of \$130, which was the license renewal fee. His renewal license was issued with an expiration date of June 13, 2009.

6. On October 17, 2007 Petitioner received a report from the State Bureau of Identification indicating that Respondent was convicted of "Operating Under the Influence (Charge Class D)" on August 30, 2007. On the SBI sheet the dates were in error. Respondent was convicted on September 12, 2007 of operating under the

influence on August 9, 2006. Respondent did not notify the Commission of the September 12, 2007 OUI conviction as required by 32 M.R.S.A. § 13195.

7. On November 21, 2007 Petitioner was notified by the accountant for the Office of Licensing and Registration that Respondent's personal check issued for the renewal of his designated broker license in July 2007 had been returned for insufficient funds. In a letter, dated November 21, 2007, from the accountant, Respondent was notified that his personal check #111 had been returned for insufficient funds and that he had 14 days to pay the protested check of \$130, plus a service charge of \$20. To date nothing has been received from Respondent.

CONCLUSIONS OF LAW

Based on the above specific findings of fact and the additional evidence in the record not specifically referred to herein, and for all the reasons indicated on the record at hearing, the Commission made the following conclusion of law:

With respect to Count 1, the Commission finds that the Respondent failed to report to the Commission in a timely manner his September 12, 2007 criminal conviction in violation of 32 M.R.S.A. § 13195.

RECORD VOTE

Earl C. Black	Affirmative
David C. Kitchen	Affirmative
Sharon A. Millett	Affirmative
Jeffrey S. Mitchell	Affirmative
Winfred A. Stevens	Affirmative

With respect to Count 2, the Commission finds that the Respondent demonstrated a pattern of bad faith and untrustworthiness and improper dealings by failing to report in a timely manner the September 2003, July 2004 and September 2007 criminal convictions in violation of 32 M.R.S.A. § 13067(1)(A), which was in effect at the time. By the prior consent agreement Respondent was made very aware of the necessity and importance of reporting a criminal conviction to the Commission. The fact that he failed to do so just two years after entering into a consent agreement concerning this obligation demonstrates that this failure was bad faith, untrustworthiness and improper dealings in an attempt to not have the Commission learn of his third conviction for operating under the influence.

RECORD VOTE

Earl C. Black	Affirmative
David C. Kitchen	Affirmative
Sharon A. Millett	Affirmative
Jeffrey S. Mitchell	Affirmative
Winfred A. Stevens	Affirmative

With respect to Count 3, the Commission finds that the Respondent knew that the Commission would rely on the validity of his personal check submitted on July 30, 2007 in payment of the license renewal fee. He demonstrated bad faith by failing to repay the protested check and service charge after being notified that his check had been returned for insufficient funds. This was a violation of 32 M.R.S.A. § 13067(1)(A),

which was in effect at the time. Failing to pay a protested check after notice is a very serious matter and, under certain circumstances, can be considered criminal behavior. The Commission finds that failing to pay the check and having no communication with the Commission concerning his non-payment for the license he had received clearly demonstrates bad faith by the Respondent.

RECORD VOTE

Earl C. Black	Affirmative
David C. Kitchen	Affirmative
Sharon A. Millett	Affirmative
Jeffrey S. Mitchell	Affirmative
Winfred A. Stevens	Affirmative

ORDER

Therefore, the Commission voted to revoke Respondent's license as a designated broker and to order him to pay a fine in the amount of \$2,000 within thirty (30) days of the date of this Decision with payment being made in the form of a BANK CHECK or MONEY ORDER payable to the "Treasurer, State of Maine."

The Commission considers it necessary to impose this penalty for two reasons. First, the revocation of the license is justified, at the very least, by the fact that he currently holds a license for which he has not paid the required fee. In addition, he has demonstrated a total lack of responsibility for this non-payment by failing to pay it or to communicate with the Commission concerning the situation. To allow Respondent to

continue to hold a license for which he has not paid would allow him to retain ill gotten gains.

The \$2,000 fine is justified as a penalty in light of the bad faith that has been demonstrated by the failure to report the OUI conviction after he was made explicitly aware of the requirement via his earlier consent agreement. Respondent could have been fined up to \$2,000 for each of the three counts. The \$2,000 fine is a total fine for the three counts which, in addition to the revocation, represents an appropriate penalty for this pattern of behavior.

RECORD VOTE

Earl C. Black	Affirmative
David C. Kitchen	Affirmative
Sharon A. Millett	Affirmative
Jeffrey S. Mitchell	Affirmative
Winfred A. Stevens	Affirmative

DATED: 4/17/08


JEFFREY S. MITCHELL, Chairperson
Maine Real Estate Commission

APPEAL RIGHTS

Pursuant to 5 M.R.S.A. § 9061, the parties are hereby notified that they have a right to appeal the Commission's decision to the Superior Court pursuant to 10 M.R.S.A. § 8003(5-A) by filing a petition for review with that court within thirty (30) days of receipt of a copy of this Decision and Order. Pursuant to 10 M.R.S.A.

§ 8003(5-A) and 5 M.R.S.A. § 11002(3), any other person aggrieved by this Decision and Order who wishes to seek judicial review thereof has forty (40) days from the date this decision was rendered to petition the Superior Court for review.