



### ISSUE PRESENTED

This matter was brought by Petitioner pursuant to 5 M.R.S.A. § 9051 et seq., 32 M.R.S.A. § 13068 and 10 M.R.S.A. § 8003(5-A). The issue presented to the Commission was whether the Petitioner has shown by a preponderance of the evidence that:

1. Respondent violated 32 M.R.S.A. § 13067(1)(F) which was in effect at the time and 13197 by certifying that he met all requirements for renewal of his real estate license, including completion of 21 clock hours of approved continuing education when he had not completed 21 hours of approved continuing education.

### FINDINGS OF FACT

1. At the beginning of the hearing, the Commission entered into evidence Petitioner's Exhibits 1 through 7.

2. Respondent filed his application to renew his designated broker license with the Commission on July 24, 2007. His prior license expired July 22, 2007. On July 24, 2007 Respondent signed the renewal application and certified that he had met the requirements for license renewal, including the completion of 21 clock hours of approved continuing education. Respondent also acknowledged on that application that he was aware that the Commission would rely on this certification for issuance of the renewal license. The renewal license was issued effective July 24, 2007 with an expiration date of July 22, 2009.

3. On July 6, 2007 Respondent was notified by the Commission that he would be audited for compliance with the continuing education requirements. No response was provided. A second notice of audit was sent to Respondent on September 12, 2007. On September 11, 2007 Respondent sent an e-mail indicating that he needed more time to obtain the certificates. During the period of the audit letters, Respondent's father had been very sick. He died in the first week of September. Respondent stated in the September 11, 2007 e-mail to staff that "I know darn well I had 22 credits and scrutinized this very closely with Art Gary at the time period. I am calling each course provider to get new certificates." During his testimony Respondent indicated that this reference to conversations with Art Gary was related to conversations about courses he took at the beginning of the licensing cycle to meet the requirements for the 2005 renewal. He wanted to be sure that he was not double counting those credits.

4. On October 31, 2007 Respondent provided certificates demonstrating that he had obtained 14 credits hours within the relevant time frame, including the mandatory core course. He did not submit any additional credits up to and including the time of the hearing in this matter. He indicated that throughout the licensing period, he was not practicing real estate. He had closed his office and essentially gone out of business and was taking care of his parents on a full-time basis. He also indicated that he kept his license in case business sought him out, but that he was not seeking out business.

5. Respondent indicated that he realizes now that he did not have the credits that he could document, but he testified that he was not aware of that at the time he signed his renewal application. He also indicated that he had not reviewed any certificates at the time he signed the renewal application and he had made a "haphazard effort" after the audit to attempt to find the certificates. He indicated that his effort was affected by the personal pressures relating to his father's final illness and some sort of enforcement action about a junkyard that was demanding his immediate attention.

#### 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 conclusions of law:

1. With respect to Count 1, the Commission finds that the Respondent certified that he met all the requirements for renewal of his real estate license, specifically completion of 21 clock hours of approved continuing education when he had only completed 14 hours, including the core course. All that is required to establish a violation of Count 1 is that the licensee failed to successfully complete the continuing education requirements, including the core course requirement. Regardless of whether the Respondent was actively practicing under his license, it was his responsibility to obtain the continuing education hours and to be able to provide documentation of those

hours upon being audited by the Commission. Although the Commission is sympathetic to personal pressures that can occur in a licensee's life, such as those faced by Respondent's family, a licensee is responsible for meeting all licensing obligations at any time he holds a license.

RECORD VOTE

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

SANCTION

The Commission orders Respondent to submit course certificates documenting 7 clock hours of approved continuing education, to be used only for Respondent's July 2007 license renewal, and to pay to the Commission a fine in the amount of \$800. Both obligations shall be completed within 30 days of the date of this Decision with payment of the fine being in the form of a BANK CHECK or MONEY ORDER payable to: "Treasurer, State of Maine." As stated, the Commission has sympathy for licensee's personal circumstances, but those personal circumstances cannot interfere with the licensee's performance of his obligations under the license. The sanction imposed hereby is consistent with sanctions imposed in other cases for a similar level of non-compliance with the continuing education requirements.

RECORD VOTE

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

DATED:

4/17/08

  
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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.