

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 10 M.R.S.A. § 8003(5-A)(A)(4) and (5), 32 M.R.S.A. § 13197(1) and (3) and Chapter 370 of the Commission Rules by certifying that she met all requirements for renewal of her real estate license, including completion of 21 clock hours of approved continuing education, when she 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 4 and Respondent's Exhibits 1 through 3.
2. Respondent filed her application to renew her associate broker license with the Commission on January 31, 2008. Her prior license expired November 7, 2007. On January 27, 2008 Respondent signed the renewal application and certified that she had completed the continuing education requirement of 21 clock hours of approved continuing education, including the three hour core course. Respondent also acknowledged on that application that she was aware that the Commission would rely

on this certification for issuance of the renewal license. The renewal license was issued effective January 31, 2008 with an expiration date of November 7, 2009.

3. On February 5, 2008 Respondent was notified by the Commission that she would be audited for compliance with the continuing education requirements. On February 27, 2008 the Respondent mailed a letter to the Commission staff with two course certificates attached. One was for 18 clock hours relating to completing the designated broker course on November 1, 2007. This was within her renewal cycle and prior to the date she submitted the renewal application. She also submitted a course certificate for the core course for 3 clock hours taken on February 25, 2008, which was after the renewal application was submitted and after the notice of audit was sent to her.

4. Respondent testified that she was planning to let her associate broker license expire and she was going to apply for her broker license. She testified that she did not realize until she called the Commission staff with a question about her broker application that she had to have an associate broker license in effect at the time of her broker's license application. She then filed the associate broker license renewal application. She testified that she had been told by third parties that taking the designated broker course would take care of her requirement to take the core course because she would be told about all of the new laws and rules. She also acknowledged that the course certificate for the designated broker course states that it was good for 18

hours of continuing education credit and that, regardless of any confusion about whether she needed to take the core course, this would still leave her 3 hours short of the 21 hour requirement. The 21 hour requirement is set forth on the face of the renewal application directly above her signature.

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 she met all the requirements for renewal of her real estate license, specifically completion of 21 clock hours of approved continuing education, when she had only completed 18 hours, and had not completed the mandatory core course. Respondent's testimony about confusion concerning whether she needed to renew her associate broker license in order to qualify for a broker license is irrelevant to the issue at hand. At the time she submitted her renewal application, she signed the form indicating that she had completed the continuing education requirements when, in fact, she only had completed 18 hours of continuing education, which did not include the mandatory core course.

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 pay to the Commission a fine in the amount of \$800 within 60 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." The Commission has not imposed a requirement to make up the additional 3 hours and to take the core course because Respondent took the core course and submitted documentation of that after her audit letter was sent to her. However, Respondent is reminded that she cannot count these hours, or having taken the core course, towards the continuing education hours necessary for her next renewal cycle.

The Commission has extended the time period for payment of the fine from the usual 30 days to 60 days. The amount of the fine is commensurate with other decisions in similar cases. The Commission further points out that, regardless of Respondent's testimony about being confused by advice provided by third parties, the application form itself clearly states the requirements necessary to meet the continuing education requirement. At that time, Respondent had no reasonable interpretation for how she

would have met the 21 hour requirement clearly set forth on the form. The Commission cautions the Respondent that her testimony concerning her understanding of the requirements necessary to apply for her designated broker license, and what was necessary to meet the continuing education requirement, demonstrates that she needs to be more personally involved in reviewing and understanding the licensing requirements for the licenses that she holds or seeks. In short, licensees need to be more personally responsible for understanding the basic obligations under the licensing structure than she was in this matter.

RECORD VOTE

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

DATED:

6/19/08



JEFFREY A. 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.