

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 32 M.R.S.A. § 13197(1) 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.
2. Respondent violated 10 M.R.S.A. § 8003(5-A)(A)(9), by failing to comply with the May 22, 2008 Consent Agreement by not submitting the continuing education course certificates by June 2, 2008 and by not paying the \$300 fine by June 17, 2008.
3. Respondent violated 32 M.R.S.A. § 13067-A(2), by engaging in conduct which taken as a whole demonstrates bad faith, incompetency, untrustworthiness or dishonesty, or fraudulent or improper dealings.

FINDINGS OF FACT

1. At the beginning of the hearing, the Commission entered into evidence Petitioner's Exhibits 1 through 11.
2. Karen L. Bivins, Deputy Director of the Commission, testified that a copy of the Complaint and Notice of Hearing in this matter was forwarded on August 7, 2008 to Nancy L. Burke, Seacoast Region Real Estate Sales and Rentals, LLC, P.O. Box 20,

North Hampden, New Hampshire 03862, which was the last address on file for Respondent with the Commission. It was mailed by certified mail, return receipt requested. The Postal Service indicated it had delivered the envelope at that address, and that Ms. Burke signed the return receipt. 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 Respondent since the Notice of Hearing was mailed. She testified that Respondent 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 other written communications, telephone voice messages or e-mails from Respondent after the Notice of Hearing was mailed and up to the time of the hearing.

4. Respondent filed her application to renew her designated broker license with the Commission on January 3, 2008. Her prior license expired December 18, 2007. On January 3, 2008 Respondent signed the renewal application and certified that she 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 she was aware that the Commission would rely on this certification for issuance of the renewal license. The renewal license was issued effective January 3, 2008 with an expiration date of December 18, 2009.

5. On February 5, 2008 Respondent was notified by the Commission that she would be audited for compliance with the continuing education requirements. Respondent did not respond to the audit notice. A second notice, dated March 7, 2008, was sent to the Respondent with instructions to respond to the audit within 10 days. Respondent did not answer that Notice of Audit either. Subsequently, the Commission staff contacted the Respondent and she stated that she would submit course certificates to the Commission, however, she did not do so.

6. On May 22, 2008, the Commission approved a consent agreement with the Respondent in which the Respondent agreed to submit the course certificates requested by the audit no later than June 2, 2008. She also agreed to pay the Commission a \$200 fine no later than June 17, 2008.

7. The course certificates were not received by the Commission by the June 2, 2008 due date. On June 13, 2008, Commission staff sent Respondent a letter by regular first class mail notifying her that she was not in compliance with the consent agreement. She was instructed to immediately provide the course certificates to avoid further disciplinary action. She was also reminded that the fine was due no later than June 17, 2008.

8. On July 18, 2008, the Commission staff received from the Respondent a certificate showing that she had completed the required 3 hour core course during her previous licensing term. She also submitted certificates showing that she had

completed 14 hours of approved continuing education after she renewed her license in January 2008. These hours were completed after she received the first Notice of Audit. Respondent also submitted course certificates for courses taken prior to the commencement of the relevant licensing term.

9. Respondent paid her \$300 fine owed pursuant to the consent agreement on July 21, 2008.

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 3 hours, which did 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

2. With respect to Count 2, the Commission finds that the Respondent failed to comply with the May 22, 2008 consent agreement by not submitting the continuing

education course certificates by June 2, 2008 and by not paying the \$300 fine by June 17, 2008, which constitutes a violation of 10 M.R.S.A. § 8003(5-A)(A)(9).

RECORD VOTE

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

3. With respect to Count 3, the Commission finds that the Respondent's conduct taken as a whole demonstrated bad faith or incompetency in violation of 32 M.R.S.A. § 13067-A(2). Having made commitments in the consent agreement to pay a fine and to provide documentation, Respondent then made no apparent effort to comply with those commitments. That is a problem. When she eventually submitted the documentation, it is clear that she knew that she had not taken the proper courses in a timely manner. In fact, she had not taken them until after she received the Audit Notice. She then resubmitted hours that were clearly taken before the relevant licensing period. This type of behavior constitutes incompetence, at the very least. But it also demonstrates clear elements of bad faith.

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 the immediate REVOCATION of Respondent's license as a broker. Respondent renewed her broker license by falsely certifying completion of the continuing education requirement. Her behavior with respect to the violations set forth in Counts 1 and 2 demonstrates a clear cavalier attitude to her licensing obligations and, as found in Count 3, constituted bad faith and incompetency in dealing with those obligations to the Commission. The Commission, therefore, considers that revocation of her license is necessary in order to protect the public from the potential for such cavalier disregard of other Commission requirements that would be more directly impact on the licensee's obligations to clients, customers and the general public with whom she deals as a broker.

RECORD VOTE

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

DATED:

10/16/08



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.