

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)(1), (4) and (5), 32 M.R.S.A. §§ 13067-A(2), 13197(1) and (3); and Chapter 370 Section 10(A) of the Maine Real Estate Commission Rules 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 5.

2. Respondent filed his on-line application to renew his broker's license with the Commission on June 18, 2008. He 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 June 21, 2008, with an expiration date of June 20, 2010.

3. On July 8, 2008 Respondent was notified by the Commission that he was being audited for compliance with the continuing education requirements. No response was provided. A second notice of audit was sent to Respondent on August 12,

2008. On August 24, 2008 Respondent submitted course certificates affirming completion of 5 clock hours of approved continuing education during his license renewal term. These 5 hours did not include the required 3 hour core course "New Laws and Rules Core Course."

4. Respondent testified that he always obtained the necessary continuing education credit. He testified that his computer had crashed and that was where he stored an Excel spread sheet showing his information about courses that he taken. He testified that he was unable to find his file where he would store the actual certificates. He testified that he could not re-create his recollection of what courses he had taken by looking at a calendar because he did not really keep a calendar and, to the extent he kept a calendar, he always threw the pages away. He also could not recall where he might have taken the courses, nor had he reviewed a car mileage log, which he kept for tax purposes, to identify travel that was related to continuing education.

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 5 hours in violation of 10 M.R.S.A. §§ 8003(5-A)(A)(1), (4) and (5), 32 M.R.S.A. §§ 13067-A(2), 13197(1) and (3); and Chapter 370 Section 10(A) of the Maine Real Estate Commission Rules. In addition, although he certified that he had completed the core course, he had not. 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.

Respondent testified that he had been a licensee for 16 years. He also had been a designated broker and, therefore, has an increased need to know the detailed rules. If he had in fact taken the courses, he could have called providers, who are required to maintain a roster. The Commission did not consider the Respondent to be credible when he testified that he had, in fact, taken the courses. Under the rules he was required to maintain sufficient recordkeeping to comply with the audit requirements.

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 16 clock hours of approved continuing education, to be used only for Respondent's June 2008 license renewal, and to pay to the Commission a fine in the amount of \$2,000. Both

obligations shall be completed within 30 days of the date of this Decision with payment of the fine payable to: "Treasurer, State of Maine". The Commission further orders that Respondent's license be **SUSPENDED** for thirty (30) days beginning thirty (30) days after he receives the written Decision and Order in this matter.

The Commission simply did not find Respondent's testimony to be credible in terms of the continuing education file being missing, having no calendar that could be reviewed, and not being able to recall the provider for any programs he would have taken. He failed to respond to the audits and apparently made no calls to attempt to reconstruct his continuing education compliance. If he, in fact, had taken the courses, Respondent's recordkeeping would raise serious concerns in terms of his handling of client records, as well.

RECORD VOTE

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

DATED:

3/26/09



SHARON A. MILLETT, 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.