

1. Respondent violated 32 M.R.S.A. §§ 13067(1)(F) and (G) and Chapter 330 Section 18(A) of the Maine Real Estate Commission Rules, all of which were in effect at the time, by failing to act in a reasonably prudent manner in order to protect and promote the interests of the buyer by not providing to the buyer copies of the two septic inspections showing that the system included a 500 gallon steel septic tank.

2. Respondent violated 32 M.R.S.A. § 13067(1)(H) in effect at the time by failing to act in a reasonably prudent manner in order to avoid error, exaggeration or concealment of pertinent information by preparing a property disclosure form that stated the septic system included a 1,000 gallon concrete septic tank.

FINDINGS OF FACT

1. At the beginning of the hearing, the Commission entered into evidence Petitioner's Exhibits 1 through 13 and Respondent's Exhibits 1 through 13.

2. Brian Bullard was living in Vermont in March 2004 when he investigated making a real estate purchase in the lakes region of Maine in order to move back to Maine with his then-girlfriend, now fiancé and her son. He made a connection with the Respondent through the Respondent's website containing various listings that attracted Bullard's attention. They eventually spoke and, at some point before April 12, 2004, Respondent showed Mr. Bullard and his fiancé a two bedroom residence at 8 Adams Post Road in Raymond, Maine.

3. Respondent had represented the seller of the property in August/September 2003 when the property was sold to Nicholas Holmquist, who was

also represented by the Respondent. The Property Disclosure Form at that time described the septic information as "unknown." On September 3, 2003, Holmquist had a septic inspection performed by Arkie Rogers Septic Service, Inc. That inspection described the system as a 500 gallon steel tank with a stone trench leach field. The inspection form also noted that "septic needs to be pumped." Respondent testified that she was aware of the results of this inspection.

4. At the time Mr. Holmquist decided to list the property with Respondent in March 2004, Respondent filled out a new Disclosure Form in the presence of Holmquist. She said that they completed the information on the septic system as being a 1,000 gallon concrete tank. That Disclosure Form was signed by Holmquist on March 28, 2004. Respondent testified that she did not review the Arkie Rogers September 3, 2003 inspection report after filling out the Property Disclosure Form and before giving it to Bullard.

5. This Disclosure Form was provided to Bullard, although the exact time period in which he received it was open to some question because he also signed for the document on April 29, 2004, after he had entered into a Purchase and Sale Agreement for the property. However, Bullard testified that it was always his understanding from either oral representations by the Respondent or from having received the Disclosure Form that the septic system was a 1,000 gallon concrete tank.

6. Bullard testified that he liked the property when he saw it and that he went back to Vermont. Over the next few days oral offers and counter offers were

exchanged with the seller through Respondent before the parties orally agreed on a price. Respondent then prepared the Purchase and Sale Agreement offer on behalf of Bullard. The Purchase and Sale Agreement contained options for Bullard to have a general building inspection, a sewage disposal inspection, and a pest inspection. He testified that a pest inspection was arranged through the Respondent. When the issue of a building inspection came up, he discussed that with the Respondent. She indicated that he could save that money since Holmquist had a building inspection done six months before. She provided that building inspection to Bullard. After problems developed with the septic system, Bullard eventually realized that the general building inspection did not actually cover the septic system. At the time he was making the decisions about what inspections to personally obtain he thought that the general building inspection did cover the septic system and that there was no need to go further.

7. In the course of moving the loan process along, an issue arose concerning the distance between the well and the septic system and the need to obtain a variance from FHA for the 3 foot shortage. Bullard was aware of this issue. All the steps to deal with this were initiated by the Respondent in June 2004. On June 2, 2004 she received a faxed copy of the September 3, 2003 Arkie Rogers' report from Arkie Rogers. On June 7, 2004 Arkie Rogers performed another inspection, which was admitted as Petitioner's Exhibit 4. That report was faxed to Respondent by Arkie Rogers on June 10, 2004. Respondent also received a site evaluator's report concerning the suitability of soils for

a leach field on the property in the event that it needed to be moved in the future. The sale of the property closed on June 25, 2004.

8. Several months after the closing Bullard had his first problem with the septic system when he found gray water backing up into the bathtub. He contacted Respondent for a referral on someone to pump the system and was recommended to Arkie Rogers. He testified that on three or four occasions between the closing and Mother's Day 2005, he had to contact Arkie Rogers when the system would back up. Arkie Rogers would then come during the day while he and his fiancé were at work and the system would be pumped. He did not receive any sort of report about the system. On Mother's Day 2005 he actually dug up the tank and from then on learned that it was a 500 gallon steel tank. He eventually replaced the system with a larger system at the cost of approximately \$6,000. When he contacted an attorney in June 2006 about the situation, the attorney obtained a copy of the September 3, 2003 Arkie Rogers' report. Bullard indicated this was the first time he was aware of that report.

9. Respondent testified that she provided the September 3, 2003 Arkie Rogers' report to Bullard with the original Disclosure Statement prior to Bullard ever making an offer on the property. She also testified that on Wednesday, June 16, 2004 she mailed Bullard copies of the June 7, 2004 Arkie Rogers' report and the site evaluator report. The Commission finds that this testimony is inaccurate and that the Petitioner's Exhibits 3, 4 and 7 were not provided by the Respondent to Bullard at any time prior to the complaint being filed in this matter. Respondent was aware on June 16, 2004 that Bullard was moving with a U-Haul on Friday, June 18th, in order to attend the

anticipated closing on that day in Maine. There was no transmittal letter provided to document any mailing of these documents, nor would such a mailing have been likely to get the information to Bullard prior to his departure from Vermont for the closing.

10. In terms of Respondent's testimony that she had provided the September 3, 2003 Arkie Rogers' report with the Disclosure Statement, Respondent provided no information to indicate that she had that document in her possession at that time. The only copy of that report she has provided in the course of this proceeding was the June 2, 2004 faxed copy, which she would not have needed to have had faxed to her if she was already in possession of it. Furthermore, the Property Disclosure Form does not indicate any attachments "explaining current problems, past repairs or additional information." Presumably, this would have been checked off in the affirmative if she was actually providing that report with the Disclosure. Furthermore, it is incomprehensible how Respondent and Seller could have made the mistakes on the 1,000 gallon and the concrete portions of the disclosure if they had that report in their possession. In fact, Respondent testified that she did not check the report prior to providing the disclosure to Bullard. If she had provided it with the disclosure, she could not help but review it since it was a one page report with the tank information clearly shown.

11. Respondent asked the Commission to give weight to her handwritten file note about having mailed "septic information." Respondent's paperwork provides no basis for attaching credibility to any documentation and dating. For example, the Purchase and Sale Agreement describes itself as having an effective date of April 12,

2004. It is actually unlikely that it was even signed by the buyer on that date since he described it as having been mailed to him after being prepared by the Respondent. Clearly, it was not signed by the Seller until April 18, 2004, which makes an effective date of April 12, 2004 nonsensical. The lead paint addendum to the contract was not signed by Bullard until April 29, 2004 and Respondent appears to have attempted to sign the lead paint addendum as the agent for the buyer on April 18, 2004 while signing as the agent for the Seller on April 1, 2004. The addendum does not even specifically name Bullard as the Buyer and it claims to be an addendum to a contract dated March 29, 2004 between Holmquist and some unidentified buyer, who eventually became Bullard by his signature on April 29, 2004. In addition, Bullard's signature for receipt of the Property Disclosure Form is not dated until April 29, 2004. Respondent wrote the Commission on May 11, 2009 specifically claiming that the September 3, 2003 report was provided prior to the offer having been made. However, the document that she specifically stated she had provided to Bullard was the September 3, 2003 report with the fax tag line to her from Arkie Rogers on June 2, 2004. All of these factors led the Commission to not attach credibility to the dates contained in Respondent's paperwork.

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 failed to act in a reasonably prudent manner in order to protect and promote the interests of

the buyer by not providing to the buyer copies of the two septic inspections showing that the system included a 500 gallon steel septic tank, in violation of 32 M.R.S.A. §§ 13067(1)(F) and (G), and Chapter 330 Section 18(A) of the Maine Real Estate Commission Rules in effect at the time.

For the reasons stated above, the Commission determined that Respondent did not provide the September 3, 2003 report or the June 7, 2004 report to the Buyer at any time prior to the closing. This failure to provide relevant information to the Buyer, who was her client, represents a failure to act in a reasonably prudent manner to protect the interests of the Buyer.

RECORD VOTE

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

2. With respect to Count 2, the Commission finds that the Respondent failed to act in a reasonably prudent manner in order to avoid error, exaggeration or concealment of pertinent information by preparing a property disclosure form that stated the septic system included a 1,000 gallon concrete septic tank, in violation of 32 M.R.S.A. § 13067(1)(H).

For the reasons stated above, and by the Respondent's own admission, Respondent made a mistake in filling out the septic information. This mistake resulted in a doubling of the size of the tank from its actual size, as well as changing the type of

tank. In light of the fact that she claimed in her testimony that she was well aware of the September 3, 2003 report, this clearly demonstrates a failure to act in a reasonably prudent manner to avoid error. Letting this erroneous information be entered on the Property Disclosure Form not only presented a risk to the Buyer who was relying on that form, it also created a risk to the Seller who would be making an inaccurate representation of about his property.

RECORD VOTE

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

SANCTION

The Commission orders: 1) the Respondent to pay a fine in the amount of \$3,000 within 30 days of receipt of this decision payable to the Treasurer of the State of Maine; 2) the Respondent shall document completing six (6) hours of approved continuing education in accordance with the Commission Rules with three (3) hours of that education relating to property disclosures and three (3) hours of that continuing education relating to the duties of a broker when representing a client. It shall be documented within sixty (60) days of receipt of this decision. These hours shall not count towards Respondent's regular continuing education requirement under her license.

The Commission originally considered a motion for a \$3,000 fine with a thirty (30) day license suspension. That was voted down 4 to 1. The Commission instead

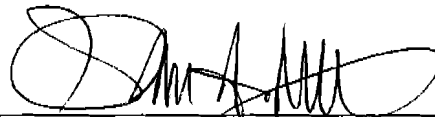
imposes the above sanction after consideration of the nature of the conduct involved and the need to demonstrate its concerns with the risk of harm to the clients from these sorts of errors. Respondent argued that it was "inadvertent" error with no harm done. That is not how the Commission sees these types of errors, or this situation. The Commission is also concerned that the paperwork produced in this transaction, which is described above in the Decision, demonstrates the type of attitude to proper paperwork that leads to these kinds of problems. Accurate dates and parties, etc., are not technicalities. This sanction is imposed to demonstrate the essential importance of accurate documentation and keeping clients informed of relevant matters.

RECORD VOTE

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

DATED:

12/15/09



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 District Court pursuant to 32 M.R.S.A. § 13068(3) 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 32 M.R.S.A. § 13068(3), 10 M.R.S.A.

§ 8003(5), 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 District Court for review.