

DEREK EISENBERG

v.

MAINE REAL ESTATE COMMISSION

Submitted on Briefs June 29, 2017
Decided July 6, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Derek Eisenberg appeals from a judgment of the Superior Court (Kennebec County, *Mullen, J.*) affirming a decision of the Maine Real Estate Commission (the Commission) concluding that Eisenberg failed to complete continuing education (CE) requirements for his real estate license renewal despite representing on his designated brokers license renewal application that he met the CE requirements, and fining him \$800.

Eisenberg applied to renew his designated brokers real estate license on June 16, 2015, representing on his application that he had completed the “core course” CE requirement established by the Commission. His license was renewed, then randomly selected for audit by the Commission, which determined, following a hearing, that Eisenberg had not taken an “approved” core course pursuant to Commission rules, and imposed an \$800 sanction. *See* 6 C.M.R. 02 039 370-2 § 10 (2010).

Eisenberg contends on appeal that the Commission erred in interpreting its own rules to require him to complete a specific core course rather than one

of several core courses. We disagree. The authorizing statute permits the Commission to establish a core course CE requirement and to place limitations on the dates between which core courses are “approved” for particular types of license renewals. *See* 32 M.R.S. §§ 13065, 13197(1), (3) (2016). The Commission’s rules require a licensee seeking renewal to complete a three-hour core course that is “approved” by the Commission, and state that each year the Commission “shall review the prescribed curriculum for the core educational requirement.” 6 C.M.R. 02 039 370-2 § 10(B). The Commission did not err in interpreting the statute and its own rules to allow it to change the “approved” core course and, for a transition period between one core course and another, allow licensees, not including Eisenberg, for a period of time to complete either one of two core courses.

Additionally, Eisenberg’s contentions that the Commission’s interpretation of its rules violates the due process and equal protection clauses of the Maine and Federal Constitutions are unpersuasive. *See Cent. Me. Power Co. v. Pub. Utils. Comm’n*, 2014 ME 56, ¶ 31, 90 A.3d 451 (stating that due process does not require a party to receive actual notice of an agency’s interpretation of its regulations); *Carrier v. Sec’y of State*, 2012 ME 142, ¶ 22, 60 A.3d 1241 (stating that we will uphold regulations that are not “arbitrary, unreasonable or irrational”). After the hearing, the Commission found, based upon competent evidence in the record, that in September 2014 its website listed the core course requirements for licensees with licenses expiring on or after April 1, 2015 as a course titled “Core Course for Designated Broker-I.” Notice of the course requirement was also sent by a voluntary email notification service to which Eisenberg subscribed. Eisenberg instead completed, on March 25, 2015, a core course entitled “Working With Buyers-What Have We Agreed To?”. Because Eisenberg’s license was set to expire after April 1, 2015, the Commission correctly concluded that he completed the incorrect core course despite having notice of which course he was required to complete.

The entry is:

Judgment affirmed.

Scott F. Hess, Esq., The Law Office of Scott F. Hess, LLC, Augusta, for appellant
Derek Eisenberg

Janet T. Mills, Attorney General, and Colin W. Hay, Asst. Atty. Gen., Office of the
Attorney General, Augusta, for appellee Maine Real Estate Commission

Kennebec County Superior Court docket number AP-2016-002
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