

Citation: Hiroti (Re), 2024 BCSRE 43
Date: 2024-07-11
File No. INC-2879

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

AND IN THE MATTER OF

Kapene Hiroti

DECISION ON LIABILITY

[This Decision has been redacted before publication.]

Date of Hearing:	Written Submissions
Counsel for BCFSa:	Simon Adams
The Respondent:	Self-Represented
Hearing Officer:	Andrew Pendray

Introduction

1. This is a hearing regarding the alleged provision of unlicensed real estate services on the part of the respondent, Kapene Hiroti.
2. The allegations against Mr. Hiroti relate to his involvement with a company known as [Company 1].
3. On March 2, 2023¹, the BC Financial Services Authority (“BCFSA”) issued a Notice of Hearing which alleged that [Company 1], Mr. Hiroti, [Company 2], and another individual, [Individual 1], had provided real estate services, in the form of rental property management services, without being licensed to do so, contrary to section 3(1) of the *Real Estate Services Act* (“RESA”), in respect of as many as 763 properties.
4. BCFSA was only able to serve Mr. Hiroti with the Notice of Hearing. After an application heard on February 7, 2024, I allowed BCFSA’s application to sever the allegations as against Mr. Hiroti, to allow the hearing to proceed against Mr. Hiroti alone.
5. The hearing of this matter proceeded pursuant to section 48 of RESA. On February 22, 2024, after a pre-hearing conference, I determined that the discipline hearing against Mr. Hiroti would proceed by way of written submissions, pursuant to section 126.1 of RESA. BCFSA, through its legal counsel provided a written submission. Mr. Hiroti, despite being provided with an opportunity to do so, did not.

Notice of Hearing

6. The Amended Notice of Hearing alleges that:
 1. Between September 2020 and June 2021, [Company 1], [Company 1A], Kapene Hiroti, and [Individual 1] provided real estate services in British Columbia without being licensed to do so under the provisions of the RESA and without being otherwise exempt from licensing under RESA, contrary to section 3(1) of the RESA, when in relation to, but not limited to, as many as 763 properties (the “Properties”), one or each of you:
 - a. provided rental property management services, as that term is defined in the RESA, in respect of the Properties, including but not limited to, providing trading services by finding tenants for the Properties and making representations about the real estate, for or in expectation of remuneration.
 2. Between June 2021 and October 2021, [Company 2], Kapene Hiroti, and [Individual 1] provided real estate services in British Columbia without being licensed to do so under the provisions of the RESA and without being otherwise exempt from licensing under RESA, contrary to section 3(1) of the RESA, when

¹ An amended notice of hearing, setting out new hearing dates, was issued on September 26, 2023 (the “Amended Notice of Hearing”). The allegations are the same in both the Notice of Hearing and the Amended Notice of Hearing.

in relation to, but not limited to, as many as 763 properties (the “Properties”) one or each of you:

- a. provided rental property management services, as that term is defined in the RESA, in respect of the Properties, including but not limited to, providing trading services by finding tenants for the Properties and making representations about the real estate, for or in expectation of remuneration.

Jurisdiction and Procedure

7. Pursuant to section 2.1(3) of RESA the Superintendent of Real Estate (the “Superintendent”) may delegate any of its powers. The Chief Hearing Officer and Hearing Officers of the Hearings Department of BCFSA have been delegated the statutory powers and duties of the Superintendent of Real Estate with respect to sections 42 through 53 of RESA.
8. BCFSA must prove its case on the balance of probabilities, that is, it must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against the respondent, I must find that the evidence is “sufficiently clear, convincing and cogent” to satisfy that test: *FH v McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.
9. As an administrative tribunal the Superintendent is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles*, 2019 BCCA 225 (CanLII).
10. Further, as noted by the BC Court of Appeal in *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing². Evidence is generally considered a matter of procedure, and given that sections 42(3) and 126.1 of RESA specifically allows for enforcement hearings to be conducted by way of written submissions, I consider that RESA contemplates admissibility of hearsay evidence at an enforcement hearing.
11. There is no provision in RESA which imports civil or criminal rules of evidence into the administrative proceedings held by the Superintendent. Nevertheless, the Superintendent may, draw upon principles underlying court rules of evidence to exclude or assess evidence.
12. The Superintendent must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Superintendent affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Superintendent must determine facts, and decide issues set out in the Notice of Discipline Hearing, based on evidence. The Superintendent may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Preliminary Issue

13. As noted above, Mr. Hiroti did not provide a written submission in this matter.

² 2006 BCCA 119 (CanLII), paragraph 38.

14. Section 48(4)(e) of RESA provides that section 42 of RESA applies to hearings conducted in relation to unlicensed persons. Section 42(1) of RESA provides that if a notice of discipline hearing has been given in accordance with section 40(3), the Superintendent may proceed with the discipline hearing, whether or not the licensee appears in person or is represented by legal counsel.
15. Section 40(3) requires that the notice of hearing must be given to the licensee at least 21 days before the time set for the discipline hearing.
16. I am satisfied that Mr. Hiroti was provided notice of the hearing of this matter, that he was aware that the matter could proceed in his absence, and that he has simply elected not to participate in this hearing. I therefore consider that it was reasonable to proceed with this hearing despite not having received a submission from Mr. Hiroti. My reasons for having reached this conclusion follow.
17. Along with its written submissions, counsel for BCFSA submitted an affidavit from [Paralegal 1], a paralegal with BCFSA, dated April 2, 2024. In that affidavit [Paralegal 1] indicated that she had emailed a letter from BCFSA legal counsel, along with a copy of the Notice of Hearing, to Mr. Hiroti on April 19, 2023. That email was sent to [Email 1].
18. [Paralegal 1] indicated that she had been advised by BCFSA legal counsel that Mr. Hiroti acknowledged to BCFSA legal counsel, in an April 23, 2023 telephone call, the service of the Notice of Hearing, but only on a personal basis and not on behalf of the companies named in the Notice of Hearing.
19. I accept, based on the above, that Mr. Hiroti acknowledged having been served with the Notice of Hearing.
20. [Paralegal 1] indicated that on May 11, 2023, Mr. Hiroti had emailed her requesting disclosure. [Paralegal 1] indicated that she had, on July 21, 2023 emailed Mr. Hiroti a link to provide him with digital disclosure, which consisted of an investigative report and attachments (as set out in the book of documents for this hearing). [Paralegal 1] noted that Mr. Hiroti had acknowledged to her, in a July 29, 2023 email, that he had been able to access the disclosure provided.
21. [Paralegal 1] further noted that she had observed a number of email correspondences between Mr. Hiroti and BCFSA counsel subsequent to July 29, 2023.
22. Mr. Hiroti also exchanged email communication with the Hearings Division of BCFSA, including a September 15, 2023 email agreeing to adjourn the hearing of this matter. On September 18, 2023, the Hearings Division emailed Mr. Hiroti, as well as counsel for BCFSA, and set down new hearing dates for March 11 through April 5, 2024.
23. [Paralegal 1] indicated that sometime after September 18, 2023, Mr. Hiroti had ceased to communicate with counsel for BCFSA, his email address ceased to work, and the telephone number that he had previously provided to counsel for BCFSA ceased to be in service.
24. In sum Mr. Hiroti, after having been in communication with counsel for BCFSA, as well as with the Hearings Division of BCFSA, for a lengthy period of time, suddenly ceased to be available for communication.
25. I note that in advance of the scheduled hearing date of March 11, 2024, a pre-hearing conference was scheduled for February 22, 2024. Mr. Hiroti did not attend at that pre-hearing conference.

BCFSA applied at that pre-hearing conference to have the hearing proceed by way of written submissions, and I issued directions granting that application. I also issued a direction that the parties would attend for hearing on March 11, 2024 as scheduled, in order to provide Mr. Hiroti with the opportunity to make submissions on the procedure for the hearing in the event that he appeared at that date.

26. Mr. Hiroti did not attend at the scheduled hearing time on March 11, 2024. Nor has he provided any communication to the Hearings Division since September 15, 2023.
27. Having considered all of the above, I am of the view that Mr. Hiroti simply chose to cease communicating with BCFSA and the Hearings Division subsequent to the initial hearing dates being adjourned. I need not determine the reason for which Mr. Hiroti did so, given the application of section 42(1).
28. As demonstrated by his emails, Mr. Hiroti was aware that the initial hearing was being adjourned. Although he did not reply to the Hearings Division's September 18, 2023 email setting out the new hearing dates, I consider it to be more likely than not that he was aware from that email that the hearing was to commence on March 11, 2024, given that there was no indication that his email was not working at the time that hearing notice was sent to him.
29. Mr. Hiroti did not attend for the hearing on March 11, 2024, nor did he make any attempt to contact the Hearings Division. I consider that he was provided notice of the hearing, and that he has simply elected not to participate. Given those circumstances, I am satisfied that it is appropriate to proceed in his absence as contemplated by section 42(1).

Issues

30. The issues are:
 - Did Mr. Hiroti provide real estate services, in the form of unlicensed rental property management services in relation to as many as 763 properties between September 2020 and June 2021 without being licensed to do so contrary to section 3(1) of RESA, for or in expectation of remuneration?
 - Did Mr. Hiroti provide real estate services, in the form of unlicensed rental property management services in relation to as many as 763 properties between June 2021 and October 2021 without being licensed to do so contrary to section 3(1) of RESA, for or in expectation of remuneration?

Background and Evidence

31. The evidence and information before me included a Book of Documents consisting of an investigative report which was completed on December 8, 2022, and included 135 tabs and over 2500 pages of documents. While I have reviewed all of the evidence and information before me, the following summary is not intended to be a recitation of that evidence and information. Rather, it is intended to provide context for my reasons.

[Company 1]

32. *[Company 1]* ("*[Company 1]*") was formed on September 20, 2018. It provided residential rental management services in Ontario, and offered franchising opportunities. In 2020, *[Company 1]* established national headquarters in BC, and began to offer residential management services to landlord clients in BC.

33. [Company 1A] was incorporated on November 5, 2020. The directors identified on the incorporation application were Mr. Hiroti and [Individual 1].
34. For the purposes of these reasons, [Company 1] and [Company 1A] will be referred to as “[Company 1]”.
35. None of [Company 1], any of its principals, directors, or employees have been licensed to provide real estate services under RESA.

The Complaints as a Whole

36. The volume of complaints received in this matter is noteworthy.
37. In the investigation report, it was noted that BCFSA, and its predecessor regulators, the former Real Estate Council of British Columbia and the former Office of the Superintendent of Real Estate, received approximately 125 complaints from landlords, tenants, and licensees, and that at the time of the report BCFSA was continuing to regularly receive new complaints.
38. The investigation report provided the following summary of complaints received:
 - Nine complaints from landlords who were informed in April 2021 that [Company 1] would no longer be providing property management services. All the complaints refer to the practice of [Company 1] requiring payment of “outstanding” monthly fees before deposit funds could be returned. The landlords were understandably upset that they were being required to pay these fees despite that [Company 1] was no longer providing property management services. All the complainants indicated that the agreements they signed with [Company 1] were for ongoing property management services.
 - Fourteen complaints post-order in urgent circumstances (discussed later in these reasons) from tenants who became aware of the actions taken by the Superintendent and seeking return of damage deposit funds being held by [Company 1]. All the complaints indicate that [Company 1] was unresponsive to their inquiries or requests for funds to be returned. Additional complaints were made concerning rent payments made to [Company 1] but not disbursed to landlords. Information obtained from the complaints estimates the total losses claimed to be in excess of \$20,000.00.
 - Approximately 90 complaints made post-order in urgent circumstances by landlords who had not received their rent or damage deposit funds from [Company 1]. The vast majority of the complainants had attempted to contact [Company 1] to inquire about return of funds without response. In correspondence to landlord clients in April 2021, [Company 1] noted that “Any deposit that the company is holding at this point, will be processed and sent back to the owners”. The estimated value of deposit funds not returned based on the information obtained in these complaints exceeds \$150,000.00.
39. I have summarized below the complaints that were detailed in the investigation report, and for which I have had the opportunity to review the associated documentary evidence and information.

The Initial Complaint

40. The Office Superintendent of Real Estate³ (“OSRE”) began to receive complaints about [Company 1] providing unlicensed activity beginning in September 2020. The complaints came from clients, as well as individuals who worked in the real estate industry.
41. On September 19, 2020 [Complainant 1], manager of [Brokerage 1]⁴ (“[Brokerage 1]”), wrote to OSRE and indicated that he had come across [Company 1] and that he did not believe they were licensed. [Complainant 1] questioned how [Company 1] was being permitted to operate and provide property management services in light of that fact.
42. In his complaint [Complainant 1] attached a screenshot of [Company 1]’s website. The website notes Mr. Hiroti as being a 50% owner of [Company 1], and that “[Company 1] is Canada’s leading property management company headquartered in Vancouver, BC”.
43. [Complainant 1] also provided a copy of a property management agreement that he indicated one of his clients had signed with [Company 1].
44. The [Company 1] Property Management Agreement document provided by [Complainant 1] indicated that:
 1. Owner allows [Company 1] to manage the Property, handle communications (calls/emails/messages); advertise and show the Property; screen tenants (employment/financial/background); and inspect the property.
 - ...
 3. Owner agrees to pay [Company 1] fees below
 - Monthly fee \$99 per month (after Tenant placement)
 - Tenant placement \$0 FREE

OSRE Investigation 2020

45. Upon receiving [Complainant 1]’s September 19, 2020 complaint, OSRE staff conducted open source searches on September 23, 2020 and determined that the website www.[Company 1]mgt.com offered property management services for tenants and property owners.
46. The [Company 1] website specifically indicated that for property owners [Company 1] would provide services including screening of tenants, placement of tenants, collection of rents, inspections, coordination of maintenance, and monthly financial accounting. For tenants, the website advertised dedicated leasing services and support, automated rent collection, and regular maintenance inspections.
47. OSRE staff also determined on September 23, 2020 that none of Mr. Hiroti, [Company 1], or [Individual 1] were licensed to provide real estate services in BC.

³ OSRE integrated with BCFSA in August 2021. Prior to its integration with BCFSA, OSRE was responsible for, among other things, investigations into unlicensed activity.

⁴ [Brokerage 1] is licensed under RESA to provide trading and rental property management services.

48. OSRE staff also conducted a BC Registry search on September 23, 2020, and found [Company 1], incorporation number [redacted], with the directors being Mr. Hiroti and [Individual 1].
49. Subsequent to conducting the above noted searches, OSRE staff wrote to [Company 1] and [Individual 1] and Mr. Hiroti on September 29, 2020.
50. In that September 29, 2020 letter OSRE indicated that it had received a complaint that [Company 1] may be providing services that would require a license under RESA. OSRE requested that [Company 1] reply by October 20, 2020, and in doing so explain why it felt that RESA licensing requirements would not apply to its activities, or, in the alternative, what steps [Company 1] intended to take to comply with the licensing requirements, or to cease conducting business in contravention of RESA.

[Company 1] Response 2020

51. [Company 1] replied to OSRE in an October 19, 2020 letter signed by Mr. Hiroti.
52. In that October 19, 2020 letter, Mr. Hiroti explained that [Company 1] was primarily a franchisor with active operations outside of BC, with the majority of its operations focused in Ontario. Mr. Hiroti explained that as the owners of [Company 1] were resident in BC, the national headquarters for the brand was located in this province.
53. Mr. Hiroti went on to indicate that:

Although we do not believe our current scope of operations in BC require a license under the Act, it has always been our intention to establish a licensed Brokerage in BC.

After reviewing the information provided in your email and from the Real Estate Council of British Columbia (RECBC) website, we have taken the first steps towards becoming licensed as a brokerage. These steps include:

- engaging the services of a licensed Broker for the proposed brokerage
- submitting the **Request for Brokerage Name Approval** form (currently awaiting RECBC response)
- compiling the necessary financial information required to complete the **Application of Brokerage Licence: Corporation or Partnership** form (currently awaiting financials from our accountant)

Further Complaints in 2020

[Complainant 1] – Complaint #2

54. [Complainant 1] emailed OSRE again on December 9, 2020. He noted his previous complaint regarding [Company 1], and that he had received an email from a “[Employee 1] from [Company 1]” the previous day. [Complainant 1] provided a copy of [Employee 1]’s email.
55. In that email, [Employee 1] indicated that [Company 1] had some tenants who were interested in renting a unit being offered by [Complainant 1]. [Employee 1] further explained in her email that:

We have tenants who have gone through Reference check, criminal background check, credit check and financial background check. The service we provide is not only including tenant placement, but maintaining your property. We will tell you their information before introducing them to you.

The procedure is we will be fixing appointments between you and tenants. You will meet the tenants and if you like the tenants and you think they are a good fit for your house, then there will be a fee of \$99/month for 1 year. (\$1200 for 1 year). This monthly fee only will charge once you receive your rent.

We don't charge for finding tenants, any maintenance fees, hidden fees or other fees. There is a minimal charge of \$99+taxes/month for a year.

This contract is not exclusive, you can continue finding your own tenants, if you find tenants on your own there will be no agreement between us. We do not only find tenants for your place, but manage your property.

[Complainant 2] Complaint

56. On December 16, 2020 [Complainant 2], a licensee, wrote to the licensing department of the former Real Estate Council of British Columbia ("RECBC"). In that email [Complainant 2] indicated that her company had recently had some issues with [Company 1], which was flagging online advertisements placed by her company and then trying to "sell" tenants. [Complainant 2] noted that she had looked up [Company 1] in order to speak to its managing broker, but had been unable to find their licensing.
57. [Complainant 2] attached to her email a copy of a December 16, 2020 email from [Employee 1]. The email is essentially the same as that which [Complainant 1] had already provided to OSRE.
58. Of note, OSRE determined, through its investigation in 2021, that [Employee 1] was not licensed to provide rental property management services.

OSRE and RECBC Complaints 2021

[Complainant 3] and [Complainant 4]

59. On January 21, 2021, [Complainant 3], a property owner, wrote to RECBC compliance department to make a complaint regarding [Company 1].
60. In her email [Complainant 3] explained that she signed a management agreement with [Company 1] in December 2020 which called for [Company 1] to rent out the upper floor of her property for a fee of \$99.00 per month. [Complainant 3] indicated that she subsequently was provided, on December 7, 2020, with a tenancy agreement for her to sign, which called for a one-year rental at \$2,200 per year. The tenancy agreement indicated that the tenant had paid a security deposit of \$1,100, but [Complainant 3] wrote that she had not received that amount from [Company 1].
61. [Complainant 3] explained that the tenant subsequently contacted her and indicated that he would not move in, and requested a refund of his security deposit and rent. [Complainant 3] indicated that the tenant had informed her that he had tried to contact [Company 1] a number of times with no success, and she indicated that she did not consider that [Company 1] was making any effort to address the issue.
62. OSRE followed up with [Complainant 3] within days of receiving the January 21, 2021 email, and requested further information.
63. On February 7, 2021, [Complainant 3] explained that she had dealt with an individual named [Employee 2] at [Company 1], as well as [Individual 1] and Mr. Hiroti. [Complainant 3] indicated

that the tenant, [Complainant 4], had signed a residential tenancy agreement which called for [Complainant 4] to have paid [Employee 2] \$3,300 on December 7, 2020. [Complainant 3] indicated that [Complainant 4] had subsequently contacted her and asked her to contact [Company 1] in order to obtain a refund of his rent and security deposit.

64. [Complainant 3] provided a copy of an email dated January 9, 2021 from [Employee 2] which indicated that:

The owner has contacted me regarding the rent payment. She hasn't received it yet since we received the rent in the form of cash on December 7th. The tenant wants to get out of the lease and return the keys.

65. [Complainant 4] explained, in a March 31, 2021 email to an OSRE investigator, that he had been dealing with a [Company 1] employee named [Employee 2] who had shown him [Complainant 3]'s property. [Complainant 4] indicated that he had signed a lease and had paid "[Employee 2]" the first month's rent in the amount of \$2,200 and a damage deposit in the amount of \$1,100. [Complainant 4] indicated that he attempted to contact [Company 1] multiple times in December, but received no reply.

66. He noted that [Complainant 3] had contacted him on January 1, 2021 wondering when he was moving in, and that he had explained that he would not be. [Complainant 4] indicated that it was during that conversation that [Complainant 3] informed him that she had not received the money from "[Employee 2]". [Complainant 4] indicated that that both he and [Complainant 3] had repeatedly contacted [Company 1], and that they had been informed that [Company 1] was "working on it". [Complainant 4] indicated that he concluded that they were getting the "run around", but that [Complainant 3] had eventually received two cheques for a total of approximately \$1,300 a couple of months later.

[Complainant 5]

67. On March 3, 2021 [Complainant 5] completed an online complaint form. [Complainant 5] indicated that she was a landlord, and that she had hired [Company 1] in December 2020 to manage a condo she had purchased on October 30, 2020.
68. [Complainant 5] explained that on December 2, 2020 she had received an email from [Employee 1], who [Complainant 5] described as a former employee of [Company 1]. [Complainant 5] noted that she had expressed reservations regarding the simplicity of the contract with [Company 1], but that she had allowed another [Company 1] employee, [Employee 3], to show the condo, and that she had ultimately signed a residential tenancy agreement with the tenant found by [Company 1] on December 14, 2020.
69. [Complainant 5] complained that she had interacted with several employees at [Company 1] who were providing different rental property management services to her over a period of several months, and that she was regularly unable to contact or receive services. [Complainant 5] also complained of delay in receiving payments from [Company 1], including not receiving January rent until January 27, 2021, and February rent on February 12, 2021, as well as the fact that [Company 1] had informed her that it would be keeping the damage deposit from the tenant until the tenant moved out.
70. [Complainant 5] also complained that [Company 1] had informed her, on March 1, 2021, that the [Company 1] employee managing her property, [Employee 3], had, after he had ceased working for [Company 1], contacted her tenants and had them transfer their rental payment directly to him, and that [Company 1] had reported [Employee 3] to the police. [Complainant 5] noted that

[Company 1] had indicated that it would not compensate her for lost rental payment as a result of [Employee 3]'s actions, and that any compensation would be dependent on the outcome of the police investigation.

71. Finally, [Complainant 5] noted that although she had subsequently begun receiving rent directly from her tenant, she continued to pay the monthly management fee of \$99 to [Company 1] as she had been informed by [Company 1] that the termination of her contract would cause her to incur penalties.
72. [Complainant 5] provided a copy of the "Property Management Agreement" she signed with [Company 1] on December 2, 2020. That contract was identical to that provided by [Complainant 1], as set out above.
73. [Complainant 5] also provided copies of emails between herself and [Employee 1] and [Employee 3].

[Complainant 6]

74. [Complainant 6], who was CEO of [Brokerage 1] at the time, wrote to the Professional Association of Managing Agents ("PAMA") on March 16, 2021 to express concern regarding [Company 1]. In his email [Complainant 6] indicated that he considered that [Company 1] was an unlicensed brokerage that had been operating for "the good part of a year". [Complainant 6] indicated that [Brokerage 1] was concerned as they had clients who had their deposits stolen and tenant rent stolen by [Company 1].
75. PAMA forwarded [Complainant 6]'s email to RECBC on March 16, 2021.

[Complainant 7]

76. On March 16, 2021, [Complainant 7], the owner of a property located in Coquitlam BC completed an online complaint form.
77. In that complaint [Complainant 7] indicated that he wished to make a complaint against [Company 1]. He indicated that his apartment had been managed by [Company 1], which had arranged for a tenancy commencing in February 2021. [Complainant 7] explained that his tenant had moved out on February 15, 2021, and that as a result of the tenant's actions, which included a failure to make necessary move-out arrangements with the building manager, [Complainant 7] had received a penalty from his strata corporation in the amount of \$1,000. [Complainant 7] indicated that the penalty was then negotiated down to \$750 by his [Company 1] agent, [Employee 4].
78. [Complainant 7] further explained that he had requested a refund of the tenant's damage deposit from [Company 1] in order to pay the strata penalty, but that [Company 1] had been ignoring his phone calls and emails.
79. On March 31, 2021 [Complainant 7] provided OSRE with a copy of his email conversation with [Employee 5] of [Company 1].
80. Those emails show that [Company 1] was holding a \$750 damage deposit and that its position was that the deposit could not be returned to the tenant unless "the owner pays the one year management fee to our company". In a March 30, 2021 email to [Employee 5], [Complainant 7] noted that as there was no tenant in place, there could be no tenancy fee to be paid to [Company 1]. [Complainant 7] further noted that the security deposit did not belong to [Company 1], and that he would be making a complaint to OSRE.

[Complainant 8]

81. On March 21, 2021 [Complainant 8], a landlord, completed an online complaint in which she indicated that she had hired [Company 1] to manage her property, and that “[Employee 2]” had informed her that he had received six months rent and a security deposit from a tenant for her property. [Complainant 8] attached a copy of the residential tenancy agreement calling for the tenant to pay six months of rent, \$12,600, up front.
82. [Complainant 8] also provided copies of text messages she had with “[Employee 6]” and “[Employee 2]- [Company 1]”, setting out that she agreed to pay a monthly fee to [Company 1] of \$99 after tenant placement. Those included a February 9, 2021 text message from [Complainant 8] to “[Employee 2]” asking whether he had a licence in “rental management” to which “[Employee 2]” replied, on February 10, 2021, “Yes of course...Otherwise it would be illegal”.
83. [Complainant 8] also provided screenshots which appeared to show that [Company 1] had received the six months rent payment, for a total of \$13,650, by February 13, 2021.
84. [Complainant 8] indicated that she had received rental funds in the amount of \$1,996.05 (she provided a screen shot of that deposit into her bank account), and that she had not received the following month’s rental payment. [Complainant 8] indicated that when she repeatedly contacted [Employee 2] to request such payment, he would simply tell her that he would have people from [Company 1] provide her with the money. [Complainant 8] indicated that [Company 1] did not pay her the rent which had been contracted.
85. [Complainant 8] eventually attended the [Company 1] office, and police were called as [Complainant 8] alleged that a [Company 1] employee had struck her with a glass door and knocked her to the ground.

[Complainant 9]

86. On April 7, 2021, [Complainant 9], a licensee, wrote to OSRE to complain that [Company 1] was providing unlicensed property management services. [Complainant 9] indicated that he had met with a potential client, and that his understanding from that client was that [Company 1] collected rents from tenants, deposited the rents into [Company 1] accounts, and then paid the property owner, all of which, in [Complainant 9]’s view, required a license under RESA.

OSRE and RECBC Investigation 2021

87. [Investigator 1], one of the authors of the investigation report, wrote to Mr. Hiroti on March 24, 2021. In that letter [Investigator 1] noted that he was conducting an investigation pursuant to section 48 of RESA, and requested that Mr. Hiroti attend for an interview. On March 26, 2021 [Company 1] responded and agreed to an interview.
88. [Investigator 1] wrote to [Company 1] and Mr. Hiroti again on March 29, 2021. In that letter [Investigator 1] noted that OSRE continued to receive complaints regarding [Company 1], and requested that in advance of the scheduled interview [Company 1] provide various information, and again informed Mr. Hiroti of the licensing requirements of RESA.
89. Mr. Hiroti, along with [Individual 1], attended for an interview with OSRE investigators on April 8, 2021.
90. In that interview Mr. Hiroti largely indicated that he did not agree with the view of the OSRE investigators, which was that [Company 1] and its employees were providing unlicensed rental

property management services contrary to RESA. Mr. Hiroti described [Company 1] as providing a “kind of matchmaking service” and indicated that they were “looking to do it the right way” in terms of ensuring that it was in compliance with RESA.

91. Mr. Hiroti further indicated that he could provide a direction to his staff to cease any property management operations in BC immediately.
92. On April 8, 2021, after the interview with OSRE investigators, [Individual 1] sent an email to the OSRE investigators and attached a “matchmaker agreement” that he intended to provide to [Company 1] clients, with a view to attempting to be on the “right side” of licensing requirements”.
93. The “matchmaker agreement” provided that:

[Company 1] provides a direct matchmaking service for owners and tenants with a one (1) year guarantee.

If a tenant matched with the Property by [Company 1] terminates their tenancy with the Owner before the end of their tenancy (up to one (1) year), without the approval of the Owner, [Company 1] will match a new tenant with the Property for free. Owner cannot unreasonably force a tenant to terminate their tenancy without cause.

1. Owner agrees to pay [Company 1] a Matchmaker Fee (“Fee”) as follows:

Fee equivalent to one month’s rent (minimum of \$990) plus applicable taxes.

Fee is due and payable upon acceptance by the Owner of the match.

A match is confirmed when an Owner executes an agreement to rent the Property to a tenant matched with the Property by [Company 1]. An agreement to rent includes, but is not limited to, the execution of a Residential Tenancy Agreement between the Owner and tenant, or the acceptance of a deposit by the Owner from a tenant matched with the Property by [Company 1].

2. Deposits including, but not limited to, Damage Deposits, Security Deposits and Pet Deposits will be paid to the Owner and held by the Owner. [Company 1] may see these transactions but do not directly collect or hold deposits on behalf of tenants or owners.

3. Rents will be paid to the Owner by the tenant and held by the Owner. [Company 1] may see these transactions but do not directly collect or hold rents on behalf of tenants or owners.

94. On April 9, 2021, Mr. Hiroti sent an email to all [Company 1] staff in BC. In that email he wrote that [Company 1] was not providing rental property management services in BC and that employees were not to provide rental property management services in BC as defined in RESA. Mr. Hiroti further wrote that:

Effective immediately, please focus on our matchmaking services.

95. OSRE wrote to Mr. Hiroti and [Individual 1] again on April 9, 2021, following up on information that had been requested in the March 29, 2021 letter from OSRE.

96. In the investigation report, it was noted that [Investigator 1], the OSRE investigator, had spoken to Mr. Hiroti on the telephone on April 16, 2021, and that during that conversation Mr. Hiroti had confirmed that [Company 1] had ceased property management operations and informed both its employees and clients of that fact. [Investigator 1] further noted that Mr. Hiroti indicated that:

...

b. [Company 1] was no longer receiving any funds for property management services but was still accepting and requiring payment of the monthly fee.

c. [Company 1] had initiated return of funds from owner accounts but had stopped, believing they were not permitted to do so after being advised to cease operations...

d. [Company 1] is not able to differentiate deposit funds from any other funds that may have been deposited to an owner's account for any other purpose, i.e., to facilitate repairs. HIROTI clarified that the table provided was their accounting of all owner funds currently being held and to be returned.

...

g. HIROTI was advised that complaints had been received that return of owner funds was being delayed until all monthly fees owed for the term of the agreement were paid in full. HIROTI stated that he was not aware that this was being communicated to owners. This is contrary to his stated admission previously that this is how deposit funds were being adjusted.

h. HIROTI acknowledged that return of all owner funds held by [Company 1] was required.

i. HIROTI stated that [Company 1] did not hold deposit funds or receive rent payments for all clients; some landlords held their own deposits and received their own rent.

97. In the investigation report Mr. Hiroti is noted as having attended at OSRE offices on April 15, 2021 to deliver documents and information relating to [Company 1]'s operations. Mr. Hiroti was noted as having provided copies of [Company 1] Property Management Agreements, [Company 1] emails with clients making complaints, and a table listing clients by property address for which deposit funds were held and owed to clients, in an amount equal to \$119,393.28. Mr. Hiroti also included property management contracts.

98. The investigation report indicates that OSRE staff scanned the [Company 1] property management contracts, and completed a spreadsheet documenting the 763 contracts provided. Ten of the contracts were noted to appear to be for Ontario based properties, with approximately 12 files that did not clearly list an address.

99. In an April 19, 2021 email Mr. Hiroti provided OSRE with a list of [Company 1] employees, listing 33 email addresses, and a list of property owners/clients [Company 1] had "any kind of dealings with". The list of property owners/clients is 66 pages in length.

Order in Urgent Circumstances

100. On May 6, 2021 the Superintendent issued, pursuant to sections 48, 49, and 51 of RESA, an order in urgent circumstances ordering [Company 1], Mr. Hiroti, and [Individual 1] to:

- a. Cease providing, including offering to provide, directly or indirectly, real estate services, including rental property management services, in British Columbia, effective immediately, unless and until they become licensed to do so under RESA.
- b. Forthwith deliver up and provide outstanding documents and financial records requested by OSRE including, but not limited to, financial records for each of the owners, including client ledgers or reconciliations, or accounting of funds received, disbursed, or held on account of the owner; details of fee structures; details of remuneration received including fees and commissions; list of complaints, tenant contact information; and complete client and property lists.
- c. Return all rental and deposit monies to property owners as soon as practicable and provide evidence of same to the Superintendent.
- d. Take reasonable steps to inform the public that [Company 1] is not licensed under RESA and not exempted under the Real Estate Services Regulation to provide real estate services in BC, including rental property management services, which includes, but is not limited to posting this Order on its website and other social media platforms; and,
- e. Immediately remove from its websites and all other social media platforms all references to [Company 1] providing rental property management in BC.

101. The Superintendent also ordered that [Company 1], Mr. Hiroti and [Individual 1] cease all dealings with the bank accounts currently held by [Company 1] and [Company 1A] on deposit for or in the name of [Company 1] and [Company 1A], whether held solely or jointly.

Investigation Post Urgent Order

102. Complaints continued to come into the regulator subsequent to the issuing of the Urgent Order.

Further Complaints

[Complainant 10]

103. [Complainant 10], a licensee, wrote to OSRE by email on May 10, 2021. In that email [Complainant 10] indicated that he had posted a property listing on the internet and that he had received a solicitation reply by text from an individual identified as “[Employee 7]”, representing [Company 1]. In the text solicitation, [Employee 7] indicated that [Company 1] had “many tenants” looking to rent a property for a minimum of one year and willing to pay up to \$1,750. [Employee 7] further offered to provide screened tenant placement including credit check, employment reference, criminal record check, as well as services to provide a new tenant at no cost if the tenant moved out within one year.

104. [Employee 7]’s solicitation noted that:

If Landlord decides to choose one of our tenants, they only have to pay one time fee of \$1,375. There are no initial charges and if you do not like our service, you do not need to pay us anything.

[Complainant 11]

105. On May 14, 2021 the regulator received an email from a “[Complainant 11]”. In that email [Complainant 11] indicated that she had been contacted by someone from [Company 1] regarding a property she currently had for rent.
106. [Complainant 11] attached a screen shot capture of a May 12, 2021 solicitation from an individual named [Employee 8], who indicated that he had potential long term tenants looking to rent her property. [Employee 8] indicated that [Company 1] tenants were properly screened on the basis of “reference/credit/criminal/employment check.”

[Complainant 12]

107. On May 18, 2021 the regulator received an email from [Complainant 12], who indicated that she had begun, the previous day, to receive solicitations from a “[Employee 9]” on behalf of [Company 1], asking if she would be interested in [Company 1]’s service.
108. [Complainant 12] subsequently provided the regulator with a copy of a May 19, 2021 email from [Employee 9], as well as text solicitations.
109. In that May 19, 2021 email [Employee 9] indicated that [Company 1] could “help you find long term, reliable tenants” and that [Company 1] would try to rent the property for \$100 more than the amount the landlord was seeking. [Employee 9] indicated that [Company 1] already had some potential screened tenants available.
110. In the text message solicitations “[Employee 9]” suggests that [Company 1] can assist in:
- Finding long term tenants;
 - Providing access to screened tenants;
 - A non-exclusive agreement which allows landlords to cease working with [Company 1] and pay no fee;
 - A one year tenant guarantee;
 - An 8.33% annual fee, equivalent to one month’s rent, after tenant placement, with subsequent offers to reduce the fee to \$1,350 and \$1,300.

[Company 1] Employees

[Employee 10]

111. On May 11, 2021 [Employee 10], who identified himself as a current employee of [Company 1], emailed RECBC. In his email [Employee 10] indicated that he had read the urgent orders and that he was curious, in light of those orders, how the company was “still in a running position and providing rental services to the new clients”. [Employee 10] indicated that he was unsure, after reading the orders, whether he should still be working a [Company 1].
112. Although OSRE investigators followed up with [Employee 10] by email, they received no reply.
113. On May 18, 2021, OSRE sent a letter to all [Company 1] employees advising of the Superintendent’s orders against [Company 1]. The letter spoke to the licensing requirements for rental property management services pursuant to RESA.

[Employee 7]

114. On May 19, 2021 [Employee 7] wrote to OSRE, by email, and noted that part of his role at [Company 1] was to call potential landlords who were looking to rent their property and submit the landlord's information to [Company 1]'s administration. [Employee 7] noted that it had previously been brought to his attention that [Company 1] was not licensed, but that [Individual 1] had subsequently informed him that [Company 1] was engaged in matchmaking and that a license was not required for the provision of those services. [Employee 7] indicated that he was looking to confirm that he was not doing anything illegal.
115. [Employee 7] spoke with an OSRE investigator on May 21, 2021. The investigator noted that [Employee 7] had indicated that he had been hired at [Company 1] in mid-April 2021, and that his duties were to solicit owners who had placed advertisements for their properties and offer them [Company 1]'s placement services.
116. [Employee 7] noted that he had resigned from [Company 1], but that he understood that [Company 1] was intending to relaunch its match-making services with a new company called [Company 2] (“[Company 2]”).

[Employee 1]

117. On May 20, 2021, [Employee 1] emailed OSRE indicating that she had been hired as a business development associate at [Company 1] in September 2020, and that her role had been to contact property owners and provide them with information on [Company 1]'s services, specifically rental property management services.
118. [Employee 1] indicated that she had been told from the beginning of her employment that Mr. Hiroti was licensed, and she had understood she was not required to be licensed to make calls.
119. [Employee 1] noted that on April 9, 2021 she had been informed by [Individual 1] that [Company 1] was no longer providing property management services, and that they were only to provide matchmaking services going forward. [Employee 1] indicated, however, that after April 9, 2021 her job duties remained the same, and that she would seek owner consent to engage [Company 1] and to pay a one-time placement fee, and if successful would forward the property owner's information to [Company 1]'s leasing department which would begin work on finding tenants, conducting showings, and signing contracts.
120. [Employee 1] indicated that she had resigned on May 19, 2021, after receiving the letter from OSRE, and after [Company 1] disabled all employee email.
121. [Employee 1] noted that after the OSRE letter to all employees was received, they were informed that the owners had decided to shut down [Company 1] and to introduce another company, [Company 2], which would provide the same matchmaking services but not property management services.
122. Finally, [Employee 1] indicated that the emails from the individual “[Employee 10]” had in fact come from her, and that she had been scared to be a “whistle blower”.
123. [Employee 1] also attended for an interview with OSRE investigators on May 26, 2021. At that interview she indicated that soon after she had started soliciting, she had been asked by property owners about licensing, but that when she had asked [Individual 1] about it he had informed her that she did not require a license as she was working in sales only.

124. [Employee 1] stated that her solicitation covered three main points: that tenant placement was free; owners paid a \$99 monthly fee for a year and that the agreement was not exclusive; and fees were owed only if an owner agreed to place a tenant that [Company 1] had provided. She said that owners believed that the fee was to cover property management services.

[Employee 11]

125. In a May 21, 2021 email to the OSRE investigator [Employee 11] indicated that she had commenced working as a business development associate with [Company 1] in February 2021, and had resigned after receipt of the May 19, 2021 OSRE letter.

126. She noted that her duties were to speak with property owners and offer [Company 1] services. [Employee 11] further noted that on April 9, 2021 she had been informed that [Company 1] would not be providing management services any longer, and that the new services was called matchmaking, with an intention to match a property owner with a tenant. [Employee 11] indicated that in this new model the money would be held by owners and [Company 1] would only provide owners with people to view the property.

127. At a May 26, 2021 interview with OSRE investigators [Employee 11] indicated that in an average day she would make 30 to 40 solicitations and get two to three owners who would be interested. [Employee 11] indicated that her understanding was that [Company 1]'s monthly \$99 fee was deducted from rent payments, and that [Company 1] held rent and deposit funds.

128. [Employee 11] indicated that her job did not change after ostensibly moving to a matchmaking service after April 9, 2021, other than the fact that there was a new consent agreement to provide to potential clients.

129. Like the other [Company 1] employees, [Employee 11] noted that after OSRE's May 19, 2021 email to all employees, [Company 1] employees had been informed that [Company 1] was going to provide matchmaking services only under a new name, [Company 2].

[Company 2]

130. An OSRE investigator, [Investigator 1], accessed the [Company 2] website on May 25, 2021. A screen capture of that website shows a map view of available rental properties as well as a listing of the properties and photos. [Investigator 1] noted that there were more than 200 properties listed.

131. [Investigator 1] noted in the investigation report that the face-page of the [Company 2] website indicated that [Company 2] was an online marketplace and not licensed to provide real estates services, including property management services.

[Complainant 1] – Complaint #3

132. On May 31, 2021 [Complainant 1] once again emailed OSRE. In that email [Complainant 1] complained that he had received a May 31, 2021 email solicitation from an employee of [Company 2], [Employee 12], who was offering tenant placement for a property he had advertised for rent.

133. [Complainant 1] noted that [Company 2] was not licensed, and queried whether it was an "off shoot" from [Company 1], or whether they were "playing the same game".

134. [Complainant 1] attached the solicitation email, which indicated that for a one-time payment of \$1,440 plus tax, [Company 2] would provide a properly screened tenant, guarantee a tenant for one year, and assist in obtaining a higher rental rate.
135. In a June 7, 2021 telephone conversation with an OSRE investigator [Complainant 1] indicated that he had received many similar solicitations from [Company 2] employees in the previous few weeks, and he forwarded 12 emails similar to the May 31, 2021 email from “[Employee 12]”. One of the email solicitations provided by [Complainant 1] was from [Employee 13], while the others were from [Employee 12].

[Complainant 13]

136. [Complainant 13], a licensee, emailed an OSRE investigator, [Investigator 2], on June 9, 2021. In that email she indicated that it appeared that [Company 1] had rebranded as [Company 2], and provided a solicitation email she had received from a “[Employee 14]” from [Company 2].

OSRE [Company 2] Inquiries

137. [Investigator 2] conducted further reviews of the [Company 2] website on June 1 and 2, 2021. In those reviews [Investigator 2] concluded that the website was being actively populated with new properties, with some of the properties on [Company 2] having been previously listed on the [Company 1] client list.
138. Also, on June 1, 2021 OSRE staff sent an email inquiry to [Company 2], posing as a tenant looking for a property and requesting to view three of the properties listed on the website.
139. On June 4, 2021 [Investigator 2] received a reply to that inquiry from “[Employee 15]” of [Company 2], who after asking [Investigator 2] for details of budget, location requirements, and employment, informed him that “[Employee 2]” would call to arrange a viewing.
140. [Investigator 2] eventually did attend at a property viewing with “[Employee 2]” on June 4, 2021. [Investigator 2] indicated in his report that [Employee 2] had asked him how he had heard about [Company 2], and that [Employee 2] had:
- Showed [Investigator 2] around the property.
 - Discussed rent and deposit.
 - Informed [Investigator 2] that he would need to submit a credit check and references if the landlord accepted his application;
 - Informed [Investigator 2] that if his application was accepted he would meet [Employee 2] back at the property to sign the tenancy agreement.
141. [Investigator 2] submitted further requests to view properties through the [Company 2] website on June 11, 2021.
142. [Investigator 2] documented that he received a text message from an individual he now knew to be [Employee 16]. [Investigator 2] indicated that he had confirmed with [Employee 16] that he was from [Company 2], and he proceeded to schedule a property viewing for June 15, 2021. [Investigator 2] indicated that on June 15, 2021 he met [Employee 16] at the property he had enquired about, and that [Employee 16] had shown him around the property in the presence of the landlord. [Investigator 2] further indicated that [Employee 16] answered his questions about the rental amount and certain aspects of the property.

143. [Investigator 2] also received an email from [Employee 16], on June 15, 2021, from a [Company 2] email address, requesting him to fill out an “Application to Rent Form” if he wanted to rent the property he had viewed.
144. OSRE conducted an extra-provincial corporate search and found that the directors of [Company 2] were Mr. Hiroti and [Individual 1].
145. On June 16, 2021 [Complainant 14], a property owner who was contemplating leasing space to [Company 2], wrote to OSRE. In that email [Complainant 14] indicated that he was aware of the news release regarding the orders against [Company 1], and was concerned that the owners of [Company 2] were the same owners as [Company 1]. [Complainant 14] expressed concern that the establishment of [Company 2] was simply being done to transfer the services of [Company 1] into a new company in order to circumvent the OSRE orders.
146. [Investigator 2] reviewed the [Company 2] website again on July 8, 2021, and noted that as of that date there were 722 properties listed as available, an increase from the 416 listings he had observed on June 1, 2021.
147. Mr. Hiroti attended at BCFSA’s offices for an interview with investigators on September 10, 2021. In that interview Mr. Hiroti acknowledged that:
- [Company 2] provided services for a fee to find tenants for landlords;
 - [Company 2] had no assets, and that the [Company 2] website was an asset held by [Company 1];
 - He (Mr. Hiroti), through a family trust was a 50% shareholder in [Company 1] with [Individual 1] holding the other 50%;
 - [Company 2] was set up with he and [Individual 1] each being 50% shareholders;
 - [Company 1] had purchased multiple URL's including [Company 2];
 - That to the best of his knowledge [Company 2] had been shut down and is no longer active;
 - [Company 2] was incorporated as a way of preserving the technology developed by [Company 1] and [Company 2] was a domain purchased by [Company 1];
 - [Company 2] was federally incorporated with Mr. Hiroti and [Individual 1] as directors and shareholders of the company;
 - [Company 1] was wrapping up operations, and had obligations with the Canada Revenue Agency and Employment Standards Branch (“ESB”); and
 - There were currently no [Company 1] operations, no office, and no accounts.
148. On September 17, 2021 BCFSA received correspondence from the ESB informing it that ESB had received 11 complaints from former [Company 1] employees regarding unpaid wages.
149. [Investigator 1] wrote to eight of the ESB complainants, and received replies from five. The investigator spoke to each of them on the telephone and made notes of those conversations.

Reasons and Decision

Findings

150. I find that Mr. Hiroti, between September 2020 and June 2021, provided rental property management services without being licensed to do so as required by section 3 of RESA.
151. I further find that Mr. Hiroti, between June 2021 through July 2021, provided rental property management services without being licensed to do so as required by section 3 of RESA.
152. My reasons for having reached the above noted conclusions follow.

Applicable Law

153. Section 3 of RESA sets out that a person must not provide real estate services to or on behalf of another, for or in expectation of remuneration unless the person is licensed to provide those real estate services or exempted by section 3(3) or the *Real Estate Services Regulation* from the requirement to be licensed.
154. Section 1 of RESA defines “real estate services” to mean rental property management services, strata management services, or trading services.
155. Section 1 of RESA further defines “providing”, in relation to real estate services, to include offering to provide such services, holding oneself out as a person who provides such services, or soliciting for the purposes of the provision of such services.
156. Rental property management services are further defined by section 1 of RESA as meaning any of the following services provided to or on behalf of an owner of rental real estate:
- trading services in relation to the rental of real estate;
 - collecting rents or security deposits for the use of real estate; and
 - managing the real estate on behalf of the owner by making payments to third parties, negotiating or entering into contracts, supervising employees or contractors hired or engaged by the owner, or managing landlord and tenant matters.
157. Trading services is defined by section 1 of RESA as meaning any of the following services provided to or on behalf of a party to a trade in real estate:
- (a) advising on the appropriate price for the real estate;
 - (b) making representations about the real estate;
 - (c) finding the real estate for a party to acquire;
 - (d) finding a party to acquire the real estate;
 - (e) showing the real estate;...
- ...
- but does not include an activity excluded by regulation;

The Corporate Veil

158. At the outset, it is necessary to address the nature of Mr. Hiroti’s role in [Company 1] and [Company 2].
159. The BC Court of Appeal has noted, in *The Owners, Strata Plan KAS 3410 v. Meritage Lofts Inc.*, 2022 BCCA 109, that corporate owners and principals are rarely found liable for actions

ostensibly carried out under a corporate name in the absence of findings of fraud, deceit, dishonesty, or want of authority.

160. In general terms, the corporate veil will be pierced only where those in control have expressly directed the alleged wrongdoing (*Vigier v. Darren Hart Law Corporation (Hart Legal)*, 2024 BCSC 949, at paragraph 235).
161. BCFSA submits that in this case, the corporate veil should be pierced, and that Mr. Hiroti should be found liable for any acts committed by [Company 1] or [Company 2].
162. In making that submission, BCFSA refers to *Tresoro Mining Corporation v. Mercer Gold Corp.* (B.C.), 2015 BCSC 1822, where the court described the test for piercing the corporate veil as follows:

The test for piercing the corporate veil is a stringent one. As set out in the Ontario Court of Appeal in *Shoppers Drug Mart Inc. v. 6470360 Canada Inc.* 2014 ONCA 85, two elements must be established. First, the corporate entity must be “completely dominated and controlled”, and second, the corporate entity must have been “used as a shield for fraudulent or improper conduct” (at para. 43).

163. As can be seen from the background set out above, the evidence in this case shows that the actions of [Company 1], and subsequently [Company 2], which were alleged to be the provision of rental property management services without being licensed to do so, were largely actions carried out by individuals employed by those corporations. The evidence before me does not suggest that Mr. Hiroti was directly involved with the provision of the property management services identified in the evidence before me.
164. Mr. Hiroti was, however, noted on the [Company 1] website, as being one of the founders of [Company 1].
165. Further, the evidence that is before me, in the form of corporate records and Mr. Hiroti’s own statements to investigators, makes clear that Mr. Hiroti was one of two principals of [Company 1] and [Company 2]. Corporate records indicate that Mr. Hiroti was one of two directors of both [Company 1] and [Company 1A], and Mr. Hiroti explained to investigators on April 8, 2021 that he was, through a family trust, a 50% shareholder in [Company 1], with [Individual 1] holding the remaining 50% of shares, and that there were no other principals in the company.
166. Similarly, the extra-provincial corporate records for [Company 2] indicate that the two directors of that company were Mr. Hiroti and [Individual 1]. Mr. Hiroti again confirmed to BCFSA investigators in a September 10, 2021 interview, that he and [Individual 1] each held 50% of the shares in [Company 2]. Mr. Hiroti further explained that, in any event, [Company 2] had no assets and that the [Company 2] website was in fact an asset held by [Company 1].
167. Mr. Hiroti’s interview with investigators from April 8, 2021 also makes clear that Mr. Hiroti was directly in control of the companies, rather than a distant party who had no involvement in day to day operations. Mr. Hiroti described during that April 8, 2021 interview, in detail, the nature of [Company 1]’s operations.
168. I further agree with BCFSA that Mr. Hiroti’s control over [Company 1] can be seen in the fact that he was able to issue an email to all staff of [Company 1] on April 9, 2021 to give them direction to cease providing property management services, and in the fact that after [Company 1]’s bank accounts were frozen by the Superintendent, Mr. Hiroti began to write cheques from his personal bank account to pay [Company 1] employees. Mr. Hiroti was also involved in dealing with

individual complaints from property owners, as [Complainant 3] indicated that Mr. Hiroti indicated that he was one of the individuals she had dealt with at [Company 1].

169. Given all of the above, I am satisfied, on a balance of probabilities, that Mr. Hiroti was expressly directing the wrongdoing committed by [Company 1], in the form of conducting rental property management without being licensed to do so. I am satisfied that each of the corporate entities named in the Amended Notice of Hearing were completely dominated and controlled by Mr. Hiroti and [Individual 1].
170. I turn to a consideration of whether the corporate entities were used as a shield for fraudulent or improper conduct.
171. Although none of [Company 1], Mr. Hiroti, or [Individual 1] were ever licensed to provide real estate services in BC, the evidence before me makes clear that [Company 1] was in fact engaged in the provision of those services. While it may be that Mr. Hiroti believed that he could operate [Company 1] in the manner he was, the fact is that he was operating it in a manner that was contrary to RESA.
172. While Mr. Hiroti initially attempted to suggest at the April 8, 2021 interview that [Company 1] was not providing property management services as defined by RESA, he eventually conceded in that interview that [Company 1] was doing so.
173. Mr. Hiroti, along with [Individual 1], was clearly the controlling mind of [Company 1]'s activities. The improper conduct engaged in by [Company 1] was, in my view, clearly contrary to the provisions of RESA, such that the corporate veil ought to be pierced and Mr. Hiroti ought to be found liable for [Company 1]'s unlawful actions.

Did Mr. Hiroti provide real estate services, in the form of unlicensed rental property management services in relation to as many as 763 properties between September 2020 and June 2021 without being licensed to do so contrary to section 3(1) of RESA, for or in expectation of remuneration?

174. I consider the evidence before me to overwhelmingly indicate that Mr. Hiroti, personally and through [Company 1], provided real estate services, in the form of unlicensed rental property management services in relation to as many as 753 properties, without being licensed to do so, between September 2020 and June 2021.
175. I note that I have concluded the appropriate number to reference is 753, as that is the number of contracts that could relate to BC properties, based on the disclosure received from Mr. Hiroti. The figure of 763 properties would include the 10 contracts located in Ontario. In my view, based upon the evidence before me, it is not appropriate to include those properties, which are not within BC, in a consideration of Mr. Hiroti's violation of RESA.
176. In my view, the evidence clearly demonstrates that from September 2020 through June 2021, [Company 1] engaged in unlicensed rental property management services by engaging in actions such as negotiating contracts, managing landlord and tenant matters, collecting rents or security deposits, and trading services including finding a party to acquire real estate and showing real estate.
177. I note that the initial complaint from [Complainant 1] provided a copy of the [Company 1] Agreement document, which expressly offered to handle communications regarding the property, screen tenants, and advertise and show the property, all for a monthly fee of \$99 once a tenant had been placed. That [Company 1] Agreement specifically sets out that the "Owner allows [Company 1] to manage the property".

178. I consider the services offered in the [Company 1] Agreement to clearly fall within the provision of rental property management as defined by RESA, and that the agreement document makes clear that those services were being offered in the expectation of remuneration in the form of the \$99 monthly payment once [Company 1] had placed a tenant at the property.
179. Of note, each of the 763 contracts provided to OSRE by Mr. Hiroti included the same opening clause of the agreement document, that being that the owner allows [Company 1] to manage the property, handle communications, advertise and show the property, screen tenants and inspect the property. I agree with BCFSA's submission that all of those activities meet the definition of rental property management services.
180. I pause to note that while it is true that, on the evidence before me, the complaints received from [Complainant 1] and [Complainant 2] in 2020 did not involve a situation in which [Company 1] was in fact contracted to deliver rental property management services with the complainants, section 1 of RESA makes clear that "providing", in relation to real estate services, includes offering to provide such services, holding oneself out as a person who provides such services, or soliciting for the purposes of the provision of such services.
181. I have no difficulty finding that the solicitation messages received by [Complainant 1] and [Complainant 2] in 2020 involved the provision of real estate services as contemplated by the definition of providing set out in section 1 of RESA. The emails from [Employee 1] specifically describe that [Company 1] not only finds tenants but also would "manage your property".
182. The subsequent complaints received in 2021 include situations in which [Company 1] collected and then withheld from property owners both rent and security deposits ([Complainant 3] complaint); showed the property, signed residential tenancy agreement contracts, and collected rents ([Complainant 5] complaint); arranged tenants and collected (and withheld) security deposits ([Complainant 7] complaint); and arranged a tenant and collected and withheld rents ([Complainant 8] complaint).
183. I consider [Company 1]'s actions in each of those complaints to clearly fall within the definition of the provision of rental property management services. Given the [Company 1] Agreement document, I am satisfied that [Company 1] was providing those services for or in expectation of remuneration.
184. Given that Mr. Hiroti informed investigators that [Company 1] had financial holdings in excess of \$100,000 related to deposit funds owed to clients, I consider it to be clear that [Company 1] was in fact regularly collecting security deposits, which, again, meets the definition of providing rental property management services.
185. Although Mr. Hiroti wrote to all [Company 1] staff on April 9, 2021 to indicate to them that [Company 1] was not providing rental property management services in BC, and that staff was to focus on matchmaking services, I do not consider that email to alter the fact that [Company 1] continued to engage in unlicensed rental property management services subsequent to that date.
186. Rather, the ongoing complaints received by OSRE subsequent to that date make clear that [Company 1] continued to solicit for the purpose of providing unlicensed rental property management services.
187. This can be seen in the solicitation received by [Complainant 10], in May of 2021, in which the [Company 1] employee [Employee 7] indicated that [Company 1] would provide screeded tenant placement, for a one time fee; the solicitation of [Employee 12] on May 14, 2021 from a [Employee 8] from [Company 1] who was offering to provide screened tenant placement; and the

May 19, 2021 solicitation from [Employee 9] to [Complainant 12], again offering to place screened tenants and obtain a higher level of rent for an annual fee.

188. Again, I consider that each of the above emails offering to provide screened tenants to property owners for a fee constitutes the provision of rental property management services. I reiterate that finding a party to acquire real estate is a trading service as defined by section 1, and therefore forms part of rental property managements services.
189. Given that the solicitation emails provided through May of 2021 continued to offer to provide those rental property management services for a fee, I am satisfied that Mr. Hiroti, having directed [Company 1] employees to focus on the matchmaking aspect of their business, was still, through May 2021, engaged in the provision of rental property management services without being licensed to do so, and was engaged in those activities for or in expectation of remuneration.
190. I note that there is no indication on the evidence before me that any of the exemptions provided for under RESA or the *Regulations* are applicable in this case.

Did Mr. Hiroti provide real estate services, in the form of unlicensed rental property management services in relation to as many as 763 properties between June 2021 and October 2021 without being licensed to do so contrary to section 3(1) of RESA, for or in expectation of remuneration?

191. At the outset of my consideration of this issue, I note that while the website through which further unlicensed property management services were being provided was entitled [Company 2], that website was in fact owned by [Company 1]. The evidence before me suggests that [Company 2] did not have anything to do with the [Company 2] website. Certainly that is what Mr. Hiroti indicated at his September 10, 2021 interview with BCFSA investigators, and there is no evidence before me which would suggest Mr. Hiroti's indication in that regard was incorrect.
192. I acknowledge that allegation 2 in the Amended Notice of Hearing refers to alleged unlicensed rental property management services undertaken by "[Company 2], Kapene Hiroti, and [Individual 1]".
193. However, given that the allegations against Mr. Hiroti were severed, I do not consider that I must read allegation 2 as against Mr. Hiroti as necessarily requiring the involvement of [Company 2].
194. Rather, I am of the view that the allegation against Mr. Hiroti in allegation 2 of the Amended Notice of Hearing can properly be read as a question of whether Mr. Hiroti in fact continued to engage in the same unlicensed behaviour that I have found he did engage in from September 2020 through May 2021, from June of 2021 forward, after [Company 1] rebranded as [Company 2].
195. For the same reasons as set out above in respect of the piercing of the [Company 1] corporate veil, I am satisfied that Mr. Hiroti was engaged in the provision of unlicensed property management services in June and July of 2021, and that he did so for or in expectation of remuneration.
196. While I accept that [Company 1] had effectively rebranded as [Company 2] by June of 2021, that does not alter the fact that Mr. Hiroti remained in the same position in [Company 1] as he had been previously, that being one of the two directors, and one of the operating minds behind [Company 1] who was personally involved in its operations. It is, in my view, of note that Mr. Hiroti specifically advised [Company 1] staff in his April 9, 2021 email that [Company 1] would be moving forward with a focus on matching services. In sum, I do not consider the rebrand of

[Company 1] to [Company 2] to alter the fact that the corporate veil is appropriately pierced in this case.

197. In reaching the conclusion that Mr. Hiroti was, as the operating mind of [Company 1], engaged in the provision of unlicensed rental property management services in June and July of 2021, I note that counsel for BCFSA acknowledged in his submissions that the evidence did not clearly establish for how long [Company 1]'s unlicensed rental property management services continued for.
198. I have no difficulty finding that there is sufficient information before me to indicate that [Company 1] continued to have employees, although working under the [Company 2] rebrand, through June of 2021. I note in this respect that the investigation notes indicate that former employees [Employee 17] and [Employee 18], who had made complaints to the Employment Standards Branch, had informed investigators that they had continued to work for [Company 1] until June 23, 2021.
199. It is also readily apparent, in my view, that [Company 1], through [Company 2], continued to be engaged in the solicitation of clients for unlicensed rental property management services. The solicitation email received by [Complainant 13] on June 9, 2021 suggested as much.
200. More tellingly, I consider that [Investigator 2]'s investigation clearly demonstrated that [Company 1], in the form of [Company 2], continued to have employees who were engaged in activities such as tenant placement and making representations about real estate. The property showings [Investigator 2] attended with [Company 1] employees on June 4 and June 15, 2021 clearly demonstrated as much. I note that [Investigator 2]'s investigation also indicated that the number of listings on the [Company 2] website grew from 416 listings on June 1, 2021 to 722 listings on July 8, 2021.
201. I consider all of the above to clearly suggest that [Company 1], in the form of [Company 2], was continuing to offer unlicensed rental property management services through to early July 2021.
202. In reaching this conclusion I agree with BCFSA's submission that regardless of Mr. Hiroti's view that [Company 2] was merely providing the service of finding tenants for landlords for a fee, such matching services in fact constitute the provision of trading services, and therefore rental property management services, under RESA. Simply put, I consider the act of finding a tenant for a landlord to be the finding of a party to acquire real estate, which is a trading service as defined in section 1 of RESA.
203. The fact that [Company 1], through [Company 2], may no longer have been collecting rents or security deposits after May 2021 does not alter the fact that [Company 1] was continuing to offer to engage in screened tenant placement for a fee through June of 2021. I consider that such activity requires a license pursuant to section 3 of RESA.
204. I do not, however, find the evidence before me sufficient to conclude that [Company 1], through [Company 2], continued to provide unlicensed rental property management services beyond July of 2021.
205. In my view, there was simply no clear evidence before me to indicate that [Company 1], or [Company 2], continued to operate subsequent to July of 2021. Mr. Hiroti specifically informed BCFSA, in a September 10, 2021 interview, that his understanding was that the [Company 2] website was no longer active, and had not been active for "quite a while", as there had been no payments made for the website hosting or domain names.

206. While it may be, as BCFSA submits, that BCFSA continued to receive complaints regarding [Company 1] into December of 2021, the fact that there were ongoing complaints of a general nature does not, in my view, demonstrate that [Company 1] or Mr. Hiroti was in fact continuing to provide unlicensed rental property management services beyond July of 2021.
207. I note that a review of BCFSA's complaint log indicates that the complaints received from July through November 2021 appear to relate to deposit funds that had been held and not repaid, and related to activities that occurred prior to July of 2021. The evidence before me did not indicate that there were any new complaints regarding [Company 1] or [Company 2] providing unlicensed rental property management services in the form of tenant placement, or any other specific real estate services activities, after July of 2021.
208. As a result, I would limit my finding to a conclusion that Mr. Hiroti provided rental property management services, without being licensed to do so, contrary to section 3(1), by providing trading services by finding tenants and making representations about the real estate for or in expectation of remuneration, between June 2021 and August 2021.

Conclusion

209. I find that between September 2020 and June 2021 the respondent, Kapene Hiroti, provided rental property management services in British Columbia in relation to, but not limited to 753 properties, without being licensed to do so under the provisions of RESA, and without being otherwise exempt from licensing requirements under RESA, contrary to section 3(1) of RESA.
210. I further find that between June 2021 and August 2021 the respondent, Kapene Hiroti, provided rental property management services in British Columbia without being licensed to do so under the provisions of RESA, and without being otherwise exempt from licensing requirements under RESA, for or in expectation of remuneration, contrary to section 3(1) of RESA.

Penalty and Costs

211. I retain jurisdiction to determine issues of penalty and costs, and will hear evidence and submissions from the parties concerning orders under section 49(2) of RESA, and expenses under section 49(2)(c) of RESA, and any other actions available to the Superintendent.
212. I consider that the issues of penalty and costs should proceed by way of written submissions. Should either party wish to apply to proceed by way of an oral hearing rather than written submissions, they may make such an application to the Hearings Department.
213. Unless an in-person hearing is directed, any further evidence will be received through affidavits, and submissions respecting sanction will be received in writing. Subject to further directions, the parties must provide affidavit evidence and written submissions to the Hearing Coordinator and to each other as follows:
- a. BCFSA must provide any affidavits and written submissions by August 2, 2024;
 - b. the respondent must provide any responding affidavits and written response submissions by August 23, 2024; and
 - c. BCFSA must provide any reply affidavits and written reply submissions by August 30, 2024.
214. Any party may apply to vary these dates, seek leave to cross-examine on an affidavit, or address other procedural matters.

215. Once I have arrived at a decision on sanction issues, I will issue additional reasons (a “Decision on Penalty & Costs”) that will form a part of this decision, I may make an order under section 49(2) of RESA, and make such other orders under RESA as I may deem appropriate.

216. If an order has been made under Part 4, Division 3 of RESA, the respondent will have a right to appeal to the Financial Services Tribunal under section 54(1)(e) of RESA. The respondent will have 30 days from the date of the sanction decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 11th day of July, 2024.

“Original signed by Andrew Pendray”

Andrew Pendray
Chief Hearing Officer