

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended (the “Act”)

AND

IN THE MATTER OF

[LICENSEE 1]

AND

[LICENSEE 2]

AND

[LICENSEE 3]

AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY

[APPLICANT 44]

**DECISION ON CLAIM AGAINST
THE SPECIAL COMPENSATION FUND**

[This Decision has been redacted before publication.]

1. [Applicant 44] (the “Applicants” or the “Strata”) claim against the Real Estate Special Compensation Fund (the “Fund”) for losses of \$15,800 they allege occurred as a result of real estate services provided to them by [Licensee 1] (“[Licensee 1]”), [Licensee 2], and [Licensee 3] (collectively the “Licensees”).
2. The Applicants claim that the Licensees provided them with full strata management services, including property management services, financial accounting and bookkeeping services, managing the strata’s funds under a trust, operating account and reserve account, collecting owner contributions, and paying service providers. The Applicants say that the Licensees declared that the strata had a budget surplus of \$12,305.17, but that \$5,800 of that declared surplus was missing. The Applicants further say that in its fiscal year of 2019-2020, the Licensees gave faulty advice and “duped” the strata council, leading to the strata having to withdraw \$10,000 from its contingency reserve fund (“CRF”) which would not have been required absent the actions of the Licensees.
3. These are my reasons determining whether the Applicants suffered a compensable loss as defined by section 60 of the *Real Estate Services Act*, SBC 2004, c 42 (“RESA”).

Proceedings and Jurisdiction

4. This hearing is held pursuant to section 63(1) of RESA, which sets out that if a claim against the Fund is made, the Superintendent of Real Estate (the “**superintendent**”) must consider the claim and may conduct a hearing to determine whether the person making the claim suffered a compensable loss

and, if applicable, assess the amount of that loss. The Superintendent of Real Estate has delegated the statutory powers and duties set out in sections 61 to 67 of RESA to Hearing Officers

Issues

5. The issues to be determined are:

- Did the Applicants suffer a compensable loss as defined by section 60 of RESA?
- If so, what is the amount of that loss?

Applicable Law

6. Section 60 of RESA defines “compensable loss” as follows:

"compensable loss" means loss suffered by a person in relation to real estate services that is the amount of money that

(a) was held or received by

- (i) a licensee,
- (ii) an officer, director, controlling shareholder or partner of the responsible brokerage,
- (iii) an employee of the licensee, of the responsible brokerage or of another related licensee of that brokerage, or
- (iv) a person acting in an independent contractor relationship with the licensee, with the responsible brokerage or with a related licensee of that brokerage,

from, for or on behalf of a principal in relation to real estate services, including any amount that is or is intended to be remuneration to a licensee, and

(b) was, as applicable,

- (i) misappropriated or wrongfully converted by a person referred to in paragraph (a) (i) to (iv),
- (ii) intentionally not paid over or accounted for, by a person referred to in paragraph (a) (i) to (iv), to the person entitled to the money, or
- (iii) obtained by the fraud of a person referred to in paragraph (a) (i) to (iv),

but does not include loss that

- (c) is claimed by a licensee or former licensee as remuneration to the licensee or former licensee,
- (d) was caused by conduct that occurred before section 61 (1) [*claim for compensation*] came into force,
- (e) was caused by conduct of a licensee acting under an exemption provided by Part 9 of the rules, or
- (f) is prescribed;

7. Section 61 of RESA provides that to make a claim for compensation from the special compensation fund, a person must apply in writing to the superintendent within the time limit established by section 61(2), which is set out as follows:

61(2) The time limit for making a claim is 2 years after the earliest of the following:

- (a) the date on which the person making the claim became aware that the compensable loss occurred;
- (b) if the licence of the responsible brokerage was cancelled or suspended by an order under section 45 (2) (a) [*orders in urgent circumstances relating to licensees*] at any time after the conduct that caused the compensable loss, the date of that cancellation or suspension;
- (c) the date the superintendent publishes a notice, in accordance with the regulations, that compensable loss may have occurred.

8. Section 61(1) requires that an application must include the particulars of the conduct on which the claim of compensable loss is based, if the person is relying on a court decision, a copy of the decision, and any other information required by the superintendent.
9. Section 65(1) of RESA provides that if a matter that is the subject of a claim against the fund has also been the subject of a court proceeding in British Columbia, a final decision of the court that:
 - (a) makes a finding on evidence that a person has suffered a compensable loss within the meaning of this Act,
 - (b) assesses the amount of a compensable loss within the meaning of this Act, or
 - (c) makes both such a finding and such an assessment,is binding on the superintendent dealing with the matter.

Background and Submissions

10. The evidence and information before me includes the Applicants' Compensation Fund Claim Form, and the Applicants' complaint against [Licensee 1] and the exhibits attached thereto.
11. The Applicants entered into an agency agreement with [Licensee 1] on August 29, 2014 (the "agency agreement"). That agency agreement sets out that the Strata Corporation is responsible for the control, management and administration of the common property, common facilities and the common assets of the Strata Corporation, and that the Strata Corporation agreed to engage [Licensee 1] to provide management services for the Strata Corporation's common property and the affairs of the Strata Corporation.
12. The agency agreement provides that the Licensees would, among other things:
 - Prepare an annual operating budget;
 - Prepare a monthly operating statement of general and reserve accounts;
 - Collect and hold in separate bank trust accounts, contingency reserve fund money, operating fund money, special levy money and any other amounts;
 - Examine routine expense invoices for accuracy and effect payment;
 - Prepare forms, pay taxes where directly invoice to the Strata and file reports as required;
 - Sign cheques or make disbursements on behalf of the Strata Corporation, enter into contracts authorized by the strata council and on behalf of the Strata Corporation invest money held by the brokerage as authorized by the strata council and on behalf of the Strata Corporation;

- Keep all records required to be kept by the *Strata Property Act* and the Strata's bylaws.

13. In an April 3, 2020 email [Licensee 3] wrote to the strata council the following:

Hello council.

Just an FYI...We had to borrow \$10,000 from the CRF to pay for the some operating expenses, which included snow removal invoices. This amount will be paid back at the beginning of May 2020.

(sic)

14. On May 14, 2020 [Licensee 3] again wrote the strata council and indicated that:

You do not have enough money to pay your water/sewer bill so we need to borrow it out of the CRF. The invoice is \$9,238 (see attached) and will have to be paid back in the new fiscal year. I am putting together some budget proposal's, and you will need to consider increasing your strata fees quite a bit more to pay this back along with the fiscal year end deficit. We will discuss tonight.

(sic)

15. At the Applicants' Annual General Meeting ("AGM") on July 15, 2020, the strata council passed the following resolution:

Be it Resolved by a $\frac{3}{4}$ vote of [Applicant 44], [Redacted], that the amount not exceeding \$10,000 (ten thousand dollars) borrowed from the Contingency Reserve to pay for required utility (sewer and water) expenses not be returned to the CRF in accordance with Section 98(2) & (3) of the Strata Property Act (SPA) that state: "The expenditure may be made out of the operating fund or contingency reserve if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise."

THEREFORE, BE IT RESOLVED, by a $\frac{3}{4}$ vote of [Applicant 44] that [Applicant 44] not return the loan back to the Contingency Reserve Fund which was borrowed to pay for utility expenses.

16. The Applicants submit that no explanation was given at the July 15, 2020 Annual General Meeting as to why \$10,000 had been borrowed from the CRF.

17. On November 18, 2020 one of the owners, Ms. C, requested the Strata's previous year financials from [Licensee 3]. The following year, on July 19, 2021, Ms. C sent an email to members of the strata council and [Licensee 3], in which Ms. C questioned the financial transparency in the Annual Financial Statement received from the Licensees for 2019-20. In that email, Ms. C suggested that if expenditures had been reported correctly, the Strata's deficit would have been much higher than \$7,013. Ms. C further suggested that money borrowed from the CRF was required to be returned before the end of the fiscal year or be voted to be not returned, and that that is not what had occurred in 2019-20.

18. In a July 16, 2021 email to strata council [Licensee 3] indicated that the water/sewer bill for May-July 2021 was not yet available so the Licensees' accounting department had to accrue the May amount and adjusted the Strata financials accordingly. [Licensee 3] indicated that she had overestimated the deficit and that the Strata had ended up with a small surplus of \$2,356.80. [Licensee 3] noted that as the budget deficit had been approved, she had therefore moved the extra money to place it under

repairs/maintenance so that the Strata would have more money budgeted for any other repairs or maintenance required.

19. Ms. C further wrote to [Licensee 3] on August 16, 2021, and questioned how the Licensees had obtained a \$25,874.00 figure for water expenses. Ms. C wrote a further email on August 27, 2021, again questioning the 2019-20 water expense, and noting that due to that figure the owners at that time had understood that there was a deficit of \$3,557.16. Ms. C further suggested that [Licensee 3], as the property manager had, after the 2020 AGM “unilaterally and arbitrarily, changed the financial figures and the budget”. Ms. C indicated that [Licensee 3] had:

...sent us another financial statement after the AGM showing us **water/sewer at \$19,930.76 and a surplus of \$2,357.17**

Where did the surplus money go?

You changed the budgeted figures on your own without any input from the strata council members.

...

The implication of the figure \$25,874 shown as water expense is huge,

Our strata fees were raised based on this, because of this deficit,

Our strata fees were raised based on a false premise?

The difference between \$25,874 and \$19,939.76 is huge.

This year’s water budget is shown at \$27,500 beside an expense of \$19,930.76

You increased the repair and maintenance budget from \$5,329 to \$8,886 on your own.

...

Please provide an explanation.

(Emphasis in original)

20. On August 30, 2021 [Licensee 3] directed Ms. C to raise her questions at the next council meeting, which was scheduled for September 23, 2021.
21. In a September 23, 2021 email to strata council members and [Licensee 3], Ms. C noted that at the July 2021 AGM the owners had been presented financials which suggested a water expense of \$25,874.00, leading to a deficit of \$3,557.16, and that after the AGM the owners had been provided financials which suggested a water expense of \$19,930.76, with a surplus of \$2,357.17. Ms. C noted that the actual water expenses for the previous fiscal year had in fact only totaled \$17,873.76, and questioned, given that the actual water bill totals, why the financials provided to owners at the July 2021 AGM had estimated water expenses at \$25,874.
22. Mr. K, a council member replied and indicated that Ms. C’s questions ought to be discussed at the strata council meeting scheduled for that date.
23. In a September 30, 2021 email to strata council members, Ms. C questioned a number of determinations by the strata council to borrow funds from the CRF in 2019 and 2020. Ms. C suggested that the financials being provided to owners were hiding the mismanagement of strata

funds, and suggested that the CRF was being used a “piggy bank”. Ms. C further suggested that there was insufficient financial transparency and communication, and that the owners were being deceived and kept in the dark regarding the Strata’s finances.

24. On December 22, 2022 the strata council’s treasurer, Mr. L, wrote to the president of [Licensee 1], [Licensee 2]. In that email Mr. L indicated that the strata council had concerns regarding the Strata’s year end income statement and balance sheet reporting. Mr. L specifically noted that there was an amount of \$5,800 that the strata council could not account for from the 2017-18 fiscal year. Mr. L attached a letter to his email, also dated December 22, 2022, in which he set out a number of questions for [Licensee 1] including the following:

- Where a \$5,800 carry forward surplus from 2017-18 to 2018-19 had gone;
- Why there was no resolution to treat the \$5,800 as a budget surplus in the operating fund or as part of the operating budget for fiscal year for 2018-19;
- How a budget surplus of \$12,305.17 was declared for fiscal 2017-18 when \$5,200 had been borrowed from the CRF in 2016-17 and repaid to the CRF in June 2017 and June 2018; which supported a surplus of only \$7,105.17
- Why, in the fiscal year 2019-20 total borrowing from the CRF was \$18,586 and the total returned of \$3,000 was not declared and stated in the year end financial or income statement for fiscal year 2019-20;
- Why a water bill of \$6,334.54 that had been carried over from fiscal year 2018-19 was not accounted for in the year end financial or income statement for fiscal year 2019-20, which created a budget shortage in 2019-20;
- Why the year end financial statement for fiscal year 2020-21 showed a water expense of \$25,874 and a budget deficit of \$3,557.16, which the strata relied on in voting to increase strata fees, was revised “a couple of days later” to show a water expense of only \$17,873.76 and a budget surplus of \$2,357.17; and
- Why the sum of at least \$12,118.93 was sitting in the Strata’s operating account for 18 months, when a resolution to transfer the excess funds into the CRF or to reduce strata fees could have been passed.

25. The strata council noted in their December 22, 2022 letter that in a resolution at the 2018 AGM \$6,506.74 had been committed to the CRF fund, and that they understood that subtracting that amount from the projected surplus would bring the surplus close to \$5,800 (\$5,798.43). The strata council noted, however, that given that there had already been repayment to the CRF of \$5,200, the actual surplus would only be \$598.43. Council indicated that in its view, the fact that there was only this minimal budget surplus, but that the surplus that had been booked sat at \$5,800, caused a “landslide of issues in fiscal years 2018-19 and 2019-20”, and specifically caused the Strata to borrow a significant amount (\$10,000) from the CRF in fiscal year 2019-20 which had never been paid back.

26. [Licensee 2] wrote to the strata council on December 29, 2022 and indicated he would reply to their inquiries in the new year.

27. On December 30, 2022, [Licensee 2] notified the strata council that [Licensee 1] would no longer be able to provide agency for the Strata Corporation, with 60 days’ notice of termination.

28. In a February 27, 2023 email, [Licensee 2] provided responses to Mr. L’s questions from December 22, 2022. [Licensee 2] explained that:

- The \$5,800 included in the budget for 2017/18 was a portion of the budget surplus for that year;
- A resolution was not required to include that \$5,800 amount as it was approved by council as part of the budget meeting;
- Actual budget expenses are used for the final budget but draft budget documents used by council will often have estimated expenses as the budget preparation normally begins before the fiscal year;
- Two payments were made into the CRF of \$2,200 in May 2017 and \$3,000 in May 2018;
- A water bill dating to the 2018-19 fiscal year was not paid during that fiscal year, and became part of the budget deficit for the 2019-20 fiscal year; and
- All withdrawals from the CRF were discussed with council and agreed to by council.

Reasons and Decision

29. The role of the Superintendent of Real Estate under section 63(1) of RESA is to determine if a compensable loss exists and, where it does, to assess the amount. The amount claimed can inform the assessment, but the Superintendent of Real Estate must make the assessment on the facts of the case before it. An error by the claimant as to the actual amount of the loss does not limit the Superintendent of Real Estate's obligation to assess the amount of the compensable loss: see *Claimant 3 (Re)*, 2022 BCSRE 34 at para 47.

Discussion

30. At the outset, I consider it to be necessary to note again the definition of section 60 of RESA. Compensable loss is described in that section as a loss suffered by a person in relation to real estate services "that is the amount of money" that was held or received by a licensee and that was either misappropriated or wrongfully converted, intentionally not paid over or accounted for, or obtained by fraud.
31. In this case, the Applicants have significant complaints with respect to the manner in which the Licensees conducted accounting practices on behalf of the Strata, and with respect to the manner in which the Licensees moved funds from the Strata's CRF to pay the operating fund. There is however, in my view, a substantial question of what loss of money the Applicants are claiming to have actually sustained.

Compensable Loss

32. To establish a compensable loss has occurred, an applicant must show the following:
- that they suffered a loss in relation to real estate services that is an amount of money that was held or received by the persons contemplated in subparagraph (a) of the definition of "compensable loss" from, for, or on behalf of a principal in relation to real estate services;
 - that it was misappropriated, wrongly converted, intentionally not paid over to the person entitled to it, or obtained by the person by fraud as required by subparagraph (b) of the definition; and
 - that the loss does not fall within the scope of excluded subparagraphs (c) to (f) of the definition.

33. In their Compensation Fund Claim Form, the Applicants are specific that the nature of their claimed \$15,800 loss, is divided into two categories. A missing budget surplus of \$5,800, and \$10,000 that was not repaid to the Applicants' contingency reserve fund.
34. I am unable to conclude that the Applicants have sustained a compensable loss. My reasons for having reached this conclusion follow.
35. I commence with the \$5,800 portion of the Applicants' claim.
36. That \$5,800 figure comes from the Strata's financial statements for the fiscal year 2017-2018 and the Strata's approved budget for the 2018-19 fiscal year. The approved budget for 2018-19 notes a carry forward surplus of \$5,800 and strata fee revenue of \$87,972.15, for total income of \$93,772.15, compared with total expected expenses of \$93,772.15.
37. The Strata's financial statements of 2017-18 show that the Strata had total income of \$88,051.67 compared to total expenses of \$75,746.50, for a surplus at the end of fiscal year of \$12,305.17.
38. Although in their claim form the Applicants claim that the \$5,800 is "missing", the Applicants, through their review of the Strata's financials, have in fact provided a clear explanation of where that \$5,800 in fact went, or, more particularly, that, as the Applicants have put it in their BCFSA complaint filing, that the \$5,800 surplus did not ever exist.
39. Rather, the Applicants explain that what actually occurred is that although there was a potential budget surplus at the end of fiscal year 2018 in the amount of \$12,305.17 as set out in the financial statements, that potential surplus amount did not take into account the fact that the Strata had repaid a total of \$5,200 to the CRF in June 2017 and May 2018, as well as the fact that as per resolution C at the 2018 annual general meeting, the Strata voted to pay a further \$6,406.74 to the CRF. Those two amounts total \$11,606.74, which suggests that in fact, any surplus held by the Strata at the end of fiscal year 2018 would have been limited to \$698.43, rather than the \$5,800 which was budgeted.
40. Based on the above, it is relatively straightforward to understand the Strata's position that "the \$5800 does not exist".
41. Given the logic to the Strata's explanation as to how the \$5,800 was improperly budgeted, I am in agreement with their submission that it is likely that the \$5,800 surplus in fiscal year 2018-19 likely did not, at any point, exist for the Strata to use to pay its forward looking expenses in fiscal year 2019-20.
42. While I understand the Applicants to be claiming that they sustained a loss of \$5,800, I do not consider that the loss they are claiming is in fact a compensable loss as contemplated by section 60 of RESA.
43. Rather, I consider that rather than making a claim for having sustained an actual loss as contemplated by section 60, the Applicants are claiming that they were subjected to an accounting error, which served to create a situation in which they then experienced budgetary issues on a going forward basis.
44. I accept the Applicants' submission that they were subjected to an accounting error, and that this likely placed them into a situation in which their financial situation in fiscal year 2019-20 was not what they had planned for. However, as they have repeatedly indicated in their complaint to BCFSA, the evidence suggests quite clearly that there was in fact no \$5,800 surplus available to be applied to the 2018-19 budget.
45. The fact that that potential surplus money did not in fact exist, does not mean that the \$5,800 was misappropriated or wrongfully converted, that that money was intentionally not paid over to them, or

that that money was obtained by fraud by a licensee. In fact, again, the Applicants do not submit nor have they provided any evidence that any of the above occurred.

46. Simply put, the Applicants do not appear to in fact claim that they have suffered a loss of actual funds. Rather, they have complaints about the manner in which their funds were accounted for by the Licensees. It is not for me, in this matter, to make any determinations as to whether the Licensees were in breach of any of their obligations under the SPA or RESA.
47. As a result of the above, I find that the Applicants have not sustained a compensable loss in relation to the \$5,800.
48. I turn to the matter of the \$10,000. Once again, I do not consider the evidence to show that the Applicants have sustained a loss of \$10,000.
49. Rather, I consider the evidence to show that the Applicants are dissatisfied with the services they were provided by the Licensees, specifically related to the Licensees' accounting practices, which led to the need to withdraw the \$10,000 from the CRF in the first place, and the fact that the Strata then voted to not replace that \$10,000.
50. Having reviewed the documentary information provided by the Applicants, I accept that the accounting error of including a \$5,800 budget surplus in the 2018-19 budget, which surplus did not actually exist, likely contributed to the fact that the Strata, in the 2019-20 fiscal year, was required to borrow from its contingency fund to pay certain bills, and ended up with a deficit of approximately \$7,000 for that fiscal year.
51. The Applicants do not, however, suggest that the \$10,000 removed from the CRF was misappropriated or wrongly converted by the Licensees. They appear to accept that all of the funds taken from the CRF were used to pay operating fund expenses incurred by the Strata, and have in fact documented directly to what bills some of those payments were made, including \$9,238 for a water bill payment and \$1,848 for payment to a contractor.
52. The Strata's objection is that more than \$18,000 were taken from the CRF from June 2019 through May 2020, and that the strata owners were not informed of this fact.
53. Whether the owners ought to have been informed or better informed, and whether the Licensees breached any professional obligations in taking money from the CRF to pay operating fund expenses is not for me to determine in this matter. The question to be answered, again, is whether the Applicants have sustained a compensable loss. Given that the funds from the CRF were specifically used to pay strata expenses, and given that the owners in fact voted on and passed the resolution which determined that \$10,000 taken from the CRF did not need to be repaid, I am unable to find that the owners sustained a compensable loss of \$10,000 contemplated by section 60.
54. In summary, the evidence simply does not show that the owners' funds, whether the \$5,800 or the \$10,000, was misappropriated, wrongly converted, intentionally not paid over to the person entitled to it, or obtained by the person by fraud as required by subparagraph (b) of the definition set out in section 60. As the Applicants have not been found to have sustained a compensable loss, their claim must be dismissed.

Conclusion

55. I find that the Applicants did not experience a compensable loss as contemplated by section 60 of RESA, and therefore their claims are dismissed.

Dated this 26th day of September, 2025, at the City of Kelowna, British Columbia

“Original signed by Andrew Pendray”

Andrew Pendray
Senior Hearing Officer