

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]
(Deceased)
([License Number redacted] Terminated)

AND

[Licensee 2]
([License Number redacted])

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

[APPLICANT 17]

[This Decision has been redacted before publication.]

1. [Applicant 17] (the “**Applicant**”) claims against the Real Estate Special Compensation Fund (the “**Fund**”) for losses it alleges occurred in relation to its purchase of [Property 1], Maple Ridge (the “**Property**”) in 2014. The Applicant says that [Licensee 1], a licensee, acted as its agent in relation to the purchase of the Property by way of an assignment of an underlying contract from [Company 1] (“**[Company 1]**”), a company owned by [Individual 1]. The Applicant says [Licensee 1] told the Applicant’s principal, [Individual 2], that the property was to be purchased for \$1,400,000 but that the sellers wanted the contract to show \$950,000 with \$450,000 payable to the owner’s son. The Applicant says that this was not true and the real purchase price was \$950,000. The Applicant says that on closing on the Property it paid \$500,000 to [Company 1], which was supposed to pay \$450,000 of those funds to the former owner’s son. Instead of making that payment, [Company 1] kept the \$450,000, which the Applicant now claims as a compensable loss under the *Real Estate Services Act*, SBC 2004, c 42 (“**RESA**”).
2. These are my reasons with regard to the Applicant’s claim against the Fund.

Proceedings and Jurisdiction

3. In April 2020, [Individual 3], the Applicant’s President, filed a claim against the Fund on behalf of the Applicant. The original claim was made by [Individual 3], but he has made it clear at various points during this proceeding that the Applicant is the appropriate party to the claim. I have therefore framed the style of cause as set out above, notwithstanding that the style of cause was originally in [Individual 3]’s name.
4. On July 30, 2021, the Compensation Committee of the Real Estate Council of British Columbia decided, pursuant to section 63(1) of RESA, to decline to make a determination regarding whether [Individual 3] or the Applicant had suffered a compensable loss and to assess the amount of such

loss on the basis that the Committee considered that the matter would be more effectively dealt with by a court proceeding (the “**First Section 63 Decision**”).

5. On January 29, 2025, the Supreme Court of British Columbia granted judgment (the “**Judgment**”) against [Licencee 1] in the amount of \$200,000 to the Applicant and [Individual 2], the sole shareholder of the Applicant, in a civil proceeding commenced in relation to the above allegations.
6. [Individual 3] provided the Judgment to the BC Financial Services Authority (“**BCFSA**”) on February 4, 2025 and on March 10, 2025 provided several documents from the civil proceeding.
7. I have decided, based on the materials provided by the Applicant and the fact that the Judgment has been issued, pursuant to section 63(1) of RESA, that a hearing into whether the Applicant had experienced a compensable loss should proceed by way of written submissions.
8. 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 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

9. The issues to be determined are:
 - a. Did the Applicant suffer a compensable loss as defined by section 60 of RESA?
 - b. If so, what is the amount of that loss?

Applicable Law

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;
10. Section 61 of RESA provides that in order 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.
11. 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.

Background

12. The information before me on this application consists of the material provided by [Individual 3] to the Real Estate Council of British Columbia prior to the First Section 63 Decision, the Real Estate Council of British Columbia's correspondence with [Individual 3] regarding the First Section 63 Decision and the then ongoing civil litigation, and the materials provided by [Individual 3] in February and March 2025.
13. The following is not a recitation of all the evidence and information before me. I have reviewed all the evidence and provide the following as context for my reasons and to indicate the facts that I have found in this proceeding.

The Property Purchase

14. In early 2014, [Individual 2] was put into contact with [Licensee 1] and [Individual 1] through [Individual 1]'s business partner. At the time, [Licensee 1] and [Individual 1] were looking to acquire a series of properties in the Maple Ridge area for redevelopment (the "**Development**"). One of those properties was the Property.
15. On February 4, 2024, the then owner of the Property, [Seller 1], (the "**Seller**") and [Company 1] entered into a contract of purchase and sale (the "**CPS**") whereby [Company 1] agreed to buy the Property for \$950,000 with completion to occur on February 27, 2014. At the same time, [Company 1] and the Seller's son, [Individual 4], (the "**Seller's Son**") signed a series of documents that provided

the Seller's Son with possession of a portion of the Property with the Seller's home on it after completion and an option to purchase that portion of the Property after the Property had been subdivided by [Company 1]. [Licensee 1] acted as a limited dual agent for the parties to the CPS.

16. I note that there is no evidence that [Licensee 1] was a shareholder, director, officer, or employee of [Company 1] at any time. It appears that the company was owned and operated by [Individual 1].
17. Around that time, [Individual 2], [Individual 1], and [Licensee 1] were in discussions about [Individual 2] making an investment in the Development. During those discussions, [Individual 2] agreed to become the purchaser of the Property for what he understood to be the full purchase price of \$1,400,000. On February 11, 2014 and during those discussions, [Licensee 1] provided [Individual 1] with a copy of the CPS which had been modified to show a purchase price of \$1,400,000, as opposed to the true \$950,000 (the "**False CPS**"). [Individual 1] then provided that False CPS to the Applicant's lawyer on February 19, 2014.
18. The evidence, including the affidavit evidence from [Individual 2] and the documentary evidence, indicates, and I find, that in late February 2014, [Licensee 1] and [Individual 2] were discussing changes to the purchase contract for the Property that would allow the Seller to obtain the full purchase price and redirect some of the sale funds to the Seller's Son but would allow [Company 1] to save a portion of the Property Transfer Tax payable on the transaction. [Licensee 1] advised that the plan was to sign a new contract of purchase and sale for the Property at a purchase price of \$950,000 and then to have [Company 1] pay \$450,000 to the Seller's Son within 24 hours of completion.
19. On February 26, 2014, [Licensee 1]'s assistant emailed [Individual 2] to explain that the Seller and [Company 1] had agreed to reduce the sale price which would save a portion of the Property Transfer Tax on the transaction. The email attached an assignment agreement providing that the Applicant would take an assignment of the CPS with a purchase price of \$950,000 and would pay an assignment fee of \$450,000 to [Company 1], bringing the total amount payable by the Applicant to \$1,400,000, the amount [Licensee 1] had told [Individual 2] that the Seller and [Company 1] had originally agreed to pay.
20. Over the course of February 26 and 27, 2014, the Applicant's lawyer and [Licensee 1] exchanged emails about the draft assignment agreement. In those emails, the Applicant's lawyer asked for copies of the CPS and the addendums to it and noted that the plan was to have [Company 1] receive the assignment fee and pay the required \$450,000 to the Seller's Son. The Applicant's lawyer also noted that the assignment fee needed to be increased to \$500,000 because the Applicant also had to reimburse [Company 1] for the \$50,000 deposit paid pursuant to the CPS. In these exchanges, [Licensee 1] sent the Applicant's lawyer various documents, including a set of three addendums purporting to be signed by the Seller and [Company 1] and all dated February 25, 2014. One of those addendums provided that [Company 1] agreed to pay \$450,000 to the Seller's Son within 24 hours of completion (the "**False Addendum**"). The other two addendums consented to [Company 1] assigning the CPS and agreed to allow the Seller, as opposed to the Seller's Son, to continue in possession of the portion of the Property with her house on it and to have the option to purchase it after subdivision.
21. As a result of those discussions, the Applicant signed an assignment agreement (the "**Assignment Agreement**") whereby it agreed to pay \$1,400,000 for the purchase of the property divided between \$950,000 to the Seller for the original purchase price and \$500,000 to [Company 1] being a \$450,000 assignment fee and a \$50,000 reimbursement of the deposit paid. [Licensee 1] is listed as the agent for the assignor, [Company 1], but not for the assignee, the Applicant.
22. I note that the documents obtained by the Applicant from [Licensee 1]'s brokerage and the Seller, through a business associate of the Seller's Son, include different addendums to the ones provided to the Applicant. Most notably, the documents in the Seller's possession did not include the False Addendum but did include three additional addendums which were not given to the Applicant by [Licensee 1]. Those three addendums purport to have the Seller agree to an increase in the purchase

price to \$1,400,000, acknowledge an increase in the commission of \$450,000, and acknowledge a payment of a referral fee of \$450,000 to [Company 1]. All the various addendums are dated February 25, 2014.

23. On February 27, 2014, the transaction closed and the Applicant became the owner of the Property. The Seller received \$950,000 for the sale of the Property, before accounting for adjustments. In the closing process, the Applicant's lawyer paid [Company 1] \$500,000 from his trust account on the understanding \$450,000 of this would be paid to the Seller's Son as required by the False Addendum. This is reflected on the Buyer's Statement of Adjustments for the transaction.
24. On February 28, 2014, [Individual 1] emailed the Applicant's lawyer to advise that the Seller's Son had been paid. What in fact occurred is that, on February 27, 2014, [Individual 1] took the payment from the Applicant's lawyer to the bank along with [Licensee 1] and an argument ensued between the two about what to do with the funds. [Individual 1]'s evidence, which I accept in this regard, is that the results of that argument were that [Company 1] would accept the funds into its account, immediately pay out \$225,000 to [Licensee 1], keep the remaining \$50,000 in its account to reimburse the \$50,000 deposit paid by [Company 1], and pay \$225,000 to [Individual 1] personally. [Individual 1] says that this payment was in satisfaction of debts owed by [Licensee 1]; however, for the reasons discussed below, I do not accept this portion of [Individual 1]'s evidence.

The Aftermath and Claims

25. The Applicant did not discover that there was any issue with the pricing in the CPS and what had been represented to him by [Licensee 1] until January 2019, when the Applicant and the Seller's Son had a meeting regarding the subdivision of the Property during which the Applicant was shown addendums to the CPS that the Applicant had not seen before. The Applicant then began gathering documents which revealed that discrepancies between the False CPS, the CPS, the False Addendum, and the Assignment Agreement.
26. The revelation that the Applicant had paid \$1,400,000 for the purchase of the Property and that [Company 1] had retained the funds instead of paying them to the Seller's Son led to the Applicant making a claim to the Real Estate Compensation Fund in April 2020 and led to the Applicant and [Individual 2] commencing a civil claim against [Licensee 1], [Individual 1], [Company 1], and [Licensee 1]'s brokerage on July 23, 2020 (the "**Civil Claim**").
27. The materials before me indicate that the claims against [Individual 1], [Company 1], and [Licensee 1]'s brokerage were settled and those parties were removed from the Civil Claim. I have not been provided with the settlement agreement and do not know what the terms of that settlement agreement are.
28. [Individual 2] and the Applicant then obtained the Judgment against [Licensee 1] on the following terms:
 - "1. An Order declaring that the Defendant, [Licensee 1], Deceased, while acting as the Plaintiff's realtor made the following fraudulent misrepresentations to the Plaintiff:
 - a. the purchase price of the Property located at [Property 1], in the City of Maple ridge, (the "[Seller] Property") pursuant to the Contract of Purchase and Sale dated February 4, 2014 was \$1,400,000 (the "Contract");
 - b. [Company 1] had contracted to purchase the [Seller] Property 13-Jan-25 New Westminster for \$1,400,000;
 - c. that the Plaintiffs were purchasing the [Seller] Property for the same price that [Company 1] would have been entitled to purchase the Property for;
 - d. that the Seller of the [Seller] Property would only consent to the assignment of the Contract if the Plaintiffs, [Individual 2] and [Applicant 17] agreed to a

restructure of the purchase structure of the [Seller] Property to allow for an assignment fee of \$450,000 with a purchase price of \$950,000;

- e. that the Plaintiff, [Applicant 17] was required to provide a cheque for \$500,000 to [Company 1] or [Individual 1] to represent a return of the \$50,000 deposit paid for the [Individual 4] Property and the \$450,000 to be paid to [Seller];
 - f. that [Company 1] and/or [Individual 1] would pay the \$450,000 assignment fee to [Individual 4]; and;
 - g. all addenda had been included in the Contracted provided to the Plaintiffs, [Individual 2] and [Applicant 17];
2. Judgment against the Defendant, [Licensee 1], in the amount of ~~\$450,000~~ \$200,000 for fraudulent misrepresentation;
 3. The Defendant, [Licensee 1] shall pay prejudgment interest to the Plaintiff; and
 4. The Defendant shall pay costs to the Plaintiff at scale B for the costs of this action.”
- [sic]¹

Submissions

29. The Applicant submits that the Judgment, despite not using the term “compensable loss”, establishes the necessary elements of a compensable loss including that [Licensee 1] was the Applicant’s realtor, that he made fraudulent misrepresentations, and that the \$500,000 meant to be paid to the Seller’s Son was kept by [Licensee 1] “who then gave half to [Individual 1].”
30. The Applicant submits that none of the exemptions in subparagraphs (c) to (f) of the definition of “compensable loss” apply.
31. The Applicant submits that the amount of the compensable loss is \$450,000, being the total additional amount paid by the Applicant pursuant to the scheme described above. In the alternative, the Applicant submits that the Judgment supports a conclusion that the compensable loss is \$200,000.

Reasons and Decision

32. I am satisfied that the evidence supports a finding that that the Applicant suffered a compensable loss as defined by section 60 of the RESA. I assess the amount of that loss to be \$225,000. My reasons for having reached these conclusions are set out below.
33. I note that the alleged loss occurred in 2014. The Applicant did not make a claim until April 2020. RESA, s 61(2)(a) requires a claim to be filed within 2 years of the date the person making the claim became aware that a compensable loss has occurred. In my view, the facts establish that [Individual 3] and the Applicant did not know that any loss or malfeasance had occurred until 2019, after [Licensee 1] had passed away. The claim was therefore filed in time.

Compensable Loss

34. To establish a compensable loss has occurred, an applicant must show the following:
 - a. that they suffered a loss in relation to real estate services that is an amount of money 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;

¹ I have included all deletions in the above quote as crossed out references and included interlineated insertions where it appears the writers intended them to go based on proximity.

- b. that it was misappropriated, wrongly converted, intentionally not paid over to the person to entitled to it, or obtained by the person by fraud as required by subparagraph (b) of the definition; and
- c. that the loss does not fall within the scope of excluded of subparagraphs (c) to (f) of the definition.

Held or Received

35. I start with the question of whether an amount of money was held or received by one of the persons identified in subparagraph (a) of the definition of compensable loss from, for, or on behalf of a principal in relation to real estate services.
36. In this case, [Company 1] received \$500,000 in relation to the closing of the sale of the Property to the Applicant. Those funds were paid to [Company 1] on the Applicant's understanding based on [Licensee 1]'s representations that the Seller had originally agreed to sell for \$1,400,000 and that the assignment of the original contract required a reduction in the selling price to \$950,000 and a payment of \$450,000 to the Seller's Son. Those representations were false. Instead, the money was received by [Company 1], \$50,000 was retained to reimburse [Company 1]'s original payment of the deposit for the CPS and the balance was divided evenly between [Licensee 1] and [Individual 1]. Each of [Licensee 1] and [Individual 1] received \$225,000.
37. In short, [Licensee 1] received \$225,000 from the sale of the Property through [Company 1]. The other \$225,000 was paid, through [Company 1], to [Individual 1].
38. In my view, the \$450,000 at issue was paid in relation to [Licensee 1]'s real estate services. [Licensee 1] was the agent for the Seller and [Company 1] in relation to the CPS and, as found in the Judgment, was the Applicant's realtor as well. Even if [Licensee 1] was not the Applicant's agent in relation to its dealings with the Property, [Licensee 1] brought the deal to the Applicant and was therefore finding a party to acquire the Property, was presenting offers to the Applicant to acquire the Property, was making representations about the Property, and was negotiating the terms of the trade, which are all defined elements of "trading services" in section 1 of RESA. He was therefore providing trading services in relation to the Property, which constitutes real estate services, while making representations to [Individual 2] and the Applicant about the terms of the CPS and the Assignment Agreement. The funds were paid in regard to the trade of the Property in relation to which [Licensee 1] was providing those services. In my view, that is sufficient to constitute being paid in relation to those real estate services within the meaning of the definition of "compensable loss".
39. Regarding the receipt of the \$450,000 by [Company 1], there is no evidence that [Licensee 1] owned or controlled [Company 1]. The evidence instead establishes that it was [Individual 1]'s company. This is not a case where the licensee was an owner or otherwise in control of a company that received the funds: *Claimant 4 (Re)*, 2022 BCSRE 31. There is no evidence that [Company 1] or [Individual 1] were [Licensee 1]'s employees or independent contractors or that they were in such a relationship with [Licensee 1]'s brokerage or another licensee of the brokerage. The evidence instead establishes that [Licensee 1] and [Individual 1] were business partners who used [Company 1] to attempt to further a real estate development project, among other aims. Therefore, subparagraphs (a)(ii), (iii), and (iv) do not apply.
40. In this case, [Licensee 1] did receive \$225,000 himself and was a licensee as contemplated by subparagraph (a)(i) of the definition of "compensable loss". Although those funds were flowed through [Company 1] as part of the \$500,000 it received and as part of the \$450,000 [Licensee 1] represented [Company 1] would pass on to the Seller's Son, they came from the Applicant and flowed directly through [Company 1] to [Licensee 1]. In my view, that is a sufficiently close connection to constitute being received from the Applicant. In my view, the remedial purpose of Division 1 of Part 5 of RESA, which is aimed at protecting the public from theft or fraud by licensees, would be defeated if the Fund

did not respond to otherwise legitimate claims just because the funds were flowed first through an unlicensed entity and then to a licensee, instead of directly to a licensee: regarding the purpose of the provisions, see *Annable v BC Financial Services Authority*, 2022 BCSC 695 at para 17.

41. If I am wrong regarding that point, in my view the funds were to be paid to the Seller's Son by [Company 1] and were received from the Applicant for that sole purpose. In other words, [Company 1] only held those funds for the purpose of discharging the Applicant's obligation, as [Individual 2] understood it, to pay those funds to the Seller's Son. They were therefore received from and held "on behalf of" the Applicant to be paid to the Seller's Son. [Licensee 1] would have been well aware of this obligation and he received the funds in breach of it. In my view, that is sufficient to establish that he also received and held his portion of those funds "on behalf of" the Applicant.
42. Regarding the other \$225,000 it was never paid to [Licensee 1]; instead, it went to [Company 1] and then to [Individual 1]. [Individual 1]'s evidence in his affidavit on this point is that it was paid only to satisfy [Licensee 1]'s debt to [Individual 1]. [Individual 1] provides no details regarding the amount or source of this debt or any documents to support his assertion that this debt existed. Instead, he merely asserts that he initially refused to accept any portion of the funds but accepted them after an argument with [Licensee 1] to that effect. [Licensee 1] is deceased and cannot provide any evidence to the contrary. [Individual 1]'s evidence in this regard is self-serving and tends to diminish his culpability by suggesting that [Licensee 1] was the actual beneficiary of [Individual 1]'s receipt of the funds. Notably and in contrast, his admission that he received the funds at all is a clear admission against interest. I also note that [Individual 1]'s evidence is essentially that he knew the funds were ill gotten but accepted them only under protest. It is difficult for me to accept this assertion given that [Individual 1] was involved in providing the Applicant's lawyer with the False CPS on February 19, 2024, picked the \$500,000 payment up from the Applicant's lawyer knowing that the funds were improperly paid, signed the Assignment Agreement, processed the funds through his company's bank account, and then emailed the Applicant's lawyer to advise that he had paid the funds to the Seller's Son. In short, [Individual 1] is not a credible witness where not otherwise supported by documentary evidence or the circumstances of the matter. Although I accept that [Licensee 1] likely led [Individual 1] through this scheme and [Individual 1] has admitted much of what occurred, I do not accept that [Individual 1]'s evidence that he did not receive the funds essentially for his own benefit, as opposed to [Licensee 1]'s benefit in reducing a debt owned by [Licensee 1], is credible.
43. Therefore, even if it were sufficient for me to find that [Individual 1]'s receipt of the funds to satisfy [Licensee 1]'s debt was enough to constitute receipt by [Licensee 1], I am not convinced, on a balance of probabilities, that [Individual 1] did receive those funds to satisfy such a debt. The Applicant has the onus of proof in this proceeding. I therefore find that the \$225,000 received by [Individual 1] was received to [Individual 1]'s own benefit and was not received by [Licensee 1].
44. I find that [Licensee 1], as a licensee, received \$225,000 from and on behalf of the Applicant in relation to real estate services when he received \$225,000 of the \$450,000 paid to [Company 1] that the Applicant intended [Company 1] to pay to the Seller's Son. This satisfies the requirements of subparagraph (a)(i) of the definition of "compensable loss".

Misappropriated, Converted, Withheld, or Obtained by Fraud

45. I find that [Licensee 1] obtained the \$225,000 paid to him by fraud. It is clear on the evidence that [Licensee 1] created a fraudulent set of documents meant to allow him to obtain those funds from the real estate transaction regarding the Property without any legal justification. He did this by convincing [Individual 2] that the actual purchase price for the Property was \$450,000 more than it actually was, inventing a reason why the Seller wanted to have a different price on paper, and then preparing a series of documents to reflect this false scenario.
46. Were it not for the false representations made by [Licensee 1] the Applicant would not have agreed to pay \$1,400,000 to acquire the property. This is obvious from the fact that it was a term of the false

contract documents that the \$450,000 be paid to the Seller's Son and the Applicant's lawyer followed up on this point to ensure it was done.

47. I note that the findings in the Judgment support this conclusion.
48. In my view, there is no other conclusion than that the \$225,000 received by [Licensee 1] was "obtained by fraud", satisfying the requirements of subparagraph (b)(iii).
49. The funds were also misappropriated by [Licensee 1] in that they were meant to be paid to the Seller's Son, on the Applicant's understanding, and they were not used for that purpose. I find that the requirements of subparagraph (b)(i) of the definition of "compensable loss" are also satisfied.

Exemptions

50. None of the exclusions to compensable loss set out in sections 60(c) through 60(f) apply in this case.
51. On the basis of the above, I find that the Applicant suffered a compensable loss when [Licensee 1] obtained \$225,000 from and on behalf of it in relation to his real estate services by way of fraud and misappropriated those funds away from their purpose as intended by the Applicant.

Assessment of Amount of Claim

52. Having concluded that the Applicant suffered a compensable loss, section 63(1)(a) requires that I assess the amount of that loss.
53. The role of the Superintendent of Real Estate under section 63(1) of RESA is clear: 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.
54. What can limit the superintendent's role is a finding by a court that an Applicant has suffered a compensable loss and an assessment of the loss by the court. Section 65(1) of RESA makes such a finding and assessment binding on the Superintendent of Real Estate.
55. In this case, the Judgment made various declarations, but it did not find that a compensable loss occurred and did not assess that loss. Instead, it found that [Individual 2] and the Applicant were entitled to judgment against [Licensee 1] in the amount of \$200,000. It is not clear on the material provided how the Court chose that number. It may have to do with the settlement agreement between the other parties to the litigation. Regardless, the Court did not assess that amount as being the amount of a compensable loss under RESA and I am therefore not bound by that amount in assessing the loss.
56. In my view, the amount of the loss should be assessed at \$225,000, being the amount [Licensee 1] improperly received pursuant to his scheme. As indicated above, the whole amount of \$450,000 was not held or received by [Licensee 1] and therefore does not form part of the compensable loss suffered in this case.
57. Before concluding, I note that if it is the case that the Applicant has received repayment of any of the \$225,000 [Licensee 1] wrongfully received, that will limit his recovery from the Fund by operation of Division 2 of Part 5 of RESA. His recovery may also be limited by any applicable prescribed limits in the *Real Estate Services Regulation*, BC Reg 506/2004. My role is only to determine if the Applicant has suffered a compensable loss and to assess the quantum of that loss. It is not to determine the balance of the issues that may arise under Division 2 of Part 5 of RESA.

Conclusion

58. I find that the Applicant experienced a compensable loss as contemplated by section 60 of RESA.

59. I assess the amount of that loss as \$225,000. A certificate specifying the amount of the compensable loss will be issued.

Dated this 23rd day of April, 2025, at the City of North Vancouver, British Columbia

“Original signed by Gareth Reeves”

Gareth Reeves
Hearing Officer

**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]
(Deceased)
([License Number Redacted] Terminated)**

AND

**[Licensee 2]
([License Number Redacted])**

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

[APPLICANT 17]

CERTIFICATE OF COMPENSABLE LOSS

In the matter of a claim for compensation to the Real Estate Special Compensation Fund by [Applicant 17], pursuant to section 63(1)(a) of the *Real Estate Services Act*, the Superintendent on April 23, 2025:

- a. determined that [Applicant 17] suffered a compensable loss; and
- b. assessed the amount of the compensable loss in the amount of \$225,000.

This Certificate is issued by the Superintendent pursuant to section 64 of the *Real Estate Services Act*.

Dated this 23rd day of April 2025, at the City of North Vancouver, British Columbia

“Original signed by Gareth Reeves”

Gareth Reeves
Hearing Officer