

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

AND

IN THE MATTER OF
[BROKERGE 1]
([License Number Redacted])

AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY
[APPLICANT 137]

[This Decision has been redacted before publication]

1. [Applicant 137] (the “**Applicant**”) brings a claim against the Real Estate Special Compensation Fund (the “**Fund**”) with respect to losses she alleges occurred in relation to funds allegedly held in trust by [Brokerage 1] (“**Brokerage 1**”) in regard to rental property management services provided by [Brokerage 1] in relation to a property in West Vancouver (the “**Property**”). The Applicant claims that \$1,898.50, comprising rent for November 2025 in the amount of \$1,186, a deposit of \$462.50, and an owner reserve of \$250, was not properly paid out to her after [Brokerage 1]’s accounts were frozen on November 5, 2025 and its licence was suspended on November 20, 2025.
2. The following are my reasons regarding the Applicant’s claim.

Proceedings

3. On August 28, 2026, a Hearing Officer¹ determined, pursuant to section 63(1) of the *Real Estate Services Act*, SBC 2004, c 42 (“**RESA**”), that a hearing into whether the Applicant had experienced a compensable loss would proceed by way of written submissions.
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.
5. This matter follows orders made pursuant to decisions in [Citation 1] and [Citation 2]. Redacted copies of some of the supporting affidavit materials filed by BCFSa seeking the orders made in those decisions were provided to the Applicant during the course of this written hearing and the Applicant was provided the opportunity to provide written evidence and submissions.

¹ 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

6. 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

7. 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;

8. Section 61 of RESA provides that in order to make a claim for compensation from the 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.
9. 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

10. The information before me in this matter includes materials provided by the Applicant in their original claim and during this written hearing and redacted copies of affidavits provided by BCFSa in seeking the orders made in [*Citation 1*] and [*Citation 2*].
11. 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.

Regulatory Background

12. As noted above, previous superintendent's orders have frozen [Brokerage 1]'s accounts and suspended its licence. I note that the evidence filed in support of those orders, redacted versions of which are part of the record in this proceeding, indicated a *prima facie* case that the funds in [Brokerage 1]'s accounts had been mismanaged by [Licensee 1], that substantial funds had been removed from [Brokerage 1]'s trust accounts, that substantial funds had been transferred back into [Brokerage 1]'s trust accounts from a company apparently controlled by [Licensee 1], [Brokerage 2], formerly known as [Brokerage 3] ("**[Brokerage 3]**"), either directly or indirectly through [Brokerage 1], and that [Licensee 1] had been involved in the preparation of false bank statements and reconciliations to conceal the withdrawals: [*Citation 1*], at para 37.

The Claimed Funds

13. On June 27, 2025, the Applicant and [Brokerage 1] entered into a management agreement under which [Brokerage 1] agreed to provide rental property management services in relation to the Property in exchange for the payment of, among other fees, a management fee of 10% of the rent collected for the Property, plus GST, and a \$5 a month administrative fee. The management agreement also permitted [Brokerage 1] to retain a reserve from the

payments of rent in relation to the Property of \$500 by way of \$100 monthly deductions from the rent to be remitted to the Applicant.

14. On May 13, 2013, [Brokerage 1], on behalf of the Applicant, and a tenant entered into a residential tenancy agreement with regard to the Property (the “**Lease**”). The Lease required the tenant to pay a deposit of \$462.50, but did not provide a deadline for that payment.
15. The Applicant has provided a Rental Owner Statement for the period from August 15, 2025 to September 11, 2025. That document indicates that [Brokerage 1] held a deposit of \$462.50 in relation to the Property, collected rent in the amount of \$1,160, and charged fees in the amount of \$127.50, which is equal to the management and administrative fees set out in the management agreement between the Applicant and [Brokerage 1].
16. The Applicant has provided a Notice of Rent Increase effective May 1, 2026 purporting to increase the rent for the Property from \$1,160 to \$1,186.
17. The Applicant has provided a bank statement showing that she received payments from [Brokerage 1] on September 10, 2025 and October 10, 2025, but no payment in November 2025. The amount paid in September 2025 comports with the amount reflected in the Rental Owner Statement for that period.
18. The Applicant has provided a Tenant Statement for the period from July 1, 2024 to December 1, 2025 prepared by [Brokerage 1]. That statement indicates that the tenant paid rent under the Lease in the amount of \$1,160 on August 1, September 2, October 1, and November 3, 2025. There is no evidence that the tenant began paying rent in the amount of \$1,186 at any time.
19. I note that the bank records before me purport to be all of [Brokerage 1]’s bank account records from August 1, 2025 to November 5, 2025. Those statements do not show any deposits of \$1,160 or \$1,186 that correlate to the payments recorded in the Tenant Statement. I note that there is a withdrawal from the account on October 31, 2025 of \$50,000 which would have brought the closing balance in the account from \$88,035.61 at the end of that day to \$38,035.61. I note also that there was a transfer into the rental trust account from [Brokerage 3] on November 4, 2025 in the amount of \$146,146.06, which appears in the circumstances to be a payment made to replenish funds that had been improperly withdrawn from that account. I note also that the security deposit account had a closing balance of \$349.82 on October 31, 2025 and received a transfer from [Brokerage 3] of \$162,319.67 on November 4, 2025, which again appears to be a payment made to replenish funds that had been improperly withdrawn from that account.

Reasons and Decision

20. I am satisfied that the evidence supports a finding that the Applicant suffered a compensable loss as defined by section 60 of RESA. I assess the amount of that loss to be equal to a total amount of \$1,495.45. My reasons for having reached these conclusions are set out below.

Compensable Loss

21. To establish a compensable loss has occurred, an applicant must show that an amount of money was held or received by the persons contemplated in subparagraph (a) of the

definition of “compensable loss” for or on behalf of a principal in relation to real estate services; they must show 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 they must show that the loss does not fall within the scope of the exclusions in subparagraphs (c)-(f) of the definition.

Held or Received

22. The evidence establishes that [Brokerage 1] purported to receive rent under the Lease over a significant period of time. It establishes that [Brokerage 1] paid out net rent funds to the Applicant in September and October, 2025. The bank statements do not show that [Brokerage 1] directly received those funds, but the fact that it was paying funds to the Applicant indicates that someone received those funds on [Brokerage 1]’s behalf.
23. Given the evidence before me and as noted above, it is possible that the funds were not held by [Brokerage 1] but by some third party who collected rent funds on [Brokerage 1]’s behalf and then remitted them to [Brokerage 1] to disburse to its clients. Such an arrangement would explain some of the large deposits and withdrawals made from [Brokerage 1]’s accounts. If I am wrong that [Brokerage 1] held or received the funds and they were in fact paid to a third party under such an arrangement, I am of the view that such a person would likely be an independent contractor within the meaning of subparagraph (a)(iv) of the definition of “compensable loss” in section 60 of RESA.
24. The evidence does not establish that the tenant paid rent in the amount of \$1,186 at any point. Although there appears to have been an attempt to increase the rent, it appears that was not in fact paid or collected.
25. On the evidence before me, I find that a third party acting as an independent contractor for [Brokerage 1] within the meaning of subparagraph (a) of the definition of “compensable loss” in section 60 of RESA, or [Brokerage 1] itself through undisclosed accounts, received and held the \$1,160 in rent for November 2025 and a deposit of \$465.50 for the Property.
26. Regarding the owner reserve, [Brokerage 1] appears to have had the right to retain a reserve, but there is no evidence that it actually did so. The Applicant may reapply on better evidence with regard to that amount.

Misappropriated, Converted, Withheld, or Obtained by Fraud

27. [Brokerage 1]’s bank statements and the affidavit evidence from the freeze order proceedings indicate a significant shortfall between expected and actual holdings in [Brokerage 1]’s rental and security deposit trust accounts as at October 31, 2025. In my view, the evidence in this proceeding establishes that the funds at issue were not properly accounted for.
28. Even if the funds were held in [Brokerage 1]’s account, they were entangled with the funds improperly diverted by [Licensee 1] and concealed by his preparation of false bank statements. It may be that the specific funds received by [Brokerage 1] or its contractor in relation to the Property were not misappropriated in part or in whole. That said, given the accounts at issue are pooled trust accounts, it will be impracticable to clearly determine which funds specifically were misappropriated, converted, or improperly accounted for. In my view, the public protection purposes of Part 5 of RESA and the Fund, militate against

engaging in an assessment of the *pro rata* accounting of the losses between claimants who suffered qualifying losses where there are some remaining funds but not enough to cover the funds in a trust account. There may be cases where the flows of funds in and out of an account will clearly indicate whose funds were misappropriated, converted, or not accounted for, in my view, this is not that case. The inflows and outflows from [Brokerage 1]'s accounts are sufficiently substantial and the shortfalls are large enough that it makes little sense, at this stage, to determine whether and in what amount the funds remaining in [Brokerage 1]'s trust accounts could be attributed to the Applicant: see [Citation 3]. at para 26.

29. I also find it to be irrelevant that the misappropriated funds, or some of them, were replenished by transfers from [Brokerage 3]. The facts of this matter demonstrate that the funds in question were misappropriated. In my view, that is sufficient to establish misappropriation, wrongful conversion, or a failure to properly account for funds owed to the Applicant as contemplated by the definition of “compensable loss”: [Citation 3], at para 27.
30. Although the Fund has responded to other claims after an accounting was completed and shortfalls were crystalized by payouts from trust funds, for example in [Citation 4] and [Citation 5], in my view, the risk associated with those shortfalls can be borne by the Fund in advance of payouts for qualifying claims by a receiver or brokerage and the Fund can then claim reimbursement of the appropriate proportion through subrogated claims under section 71(a) of RESA.
31. I therefore find that \$1,160 in rent and \$462.50 in deposit funds were not accounted for or misappropriated and that [Brokerage 1] failed to properly account for them.

Exemptions

32. None of the exclusions to compensable loss set out in sections 60(c) through 60(f) apply in this case.

Assessment of Amount of Claim

33. Having concluded that the Applicant suffered a compensable loss, section 63(1)(a) requires that I assess the amount of that loss.
34. In my view, the role of the superintendent as set out in section 63(1) of RESA is clear. Where the superintendent determines that a compensable loss exists, the superintendent must assess the amount of that compensable loss. Although the amount claimed can inform that assessment, the superintendent must determine the amount of the loss. The fact that a claimant may, in making a claim for compensation, be in error as to the actual amount of the loss they have experienced, does not affect the superintendent's roles in assessing the amount of a compensable loss.
35. I assess the compensable loss to include the \$462.50 in deposit funds claimed. I also assess the loss to include \$1,032.95 in rent for November 2025, which is the collected rent minus [Brokerage 1]'s management and administrative fee, plus GST. The total compensable loss is therefore \$1,495.45.
36. As indicated above, there is no evidence before me that [Brokerage 1] actually held the claimed owner reserve. The Applicant may reapply with regard to those funds on better evidence.

Conclusion

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

38. I assess the amount of that loss as \$1,495.50. A certificate specifying the amount of the compensable loss will be issued.

Dated this 29th day of September, 2026, at 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

**[BROKERAGE 1]
(X022055)**

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

[APPLICANT 137]

CERTIFICATE OF COMPENSABLE LOSS

In the matter of a claim for compensation to the Real Estate Special Compensation Fund by Christine McBeath, pursuant to section 63(1)(a) of the *Real Estate Services Act*, the Superintendent:

- a. determined that [Applicant 137] suffered a compensable loss in relation to a property located at [Property 1]; and
- b. assessed the amount of the compensable loss in the amount of \$1,495.45.

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

Dated this 29th day of September, 2026, at North Vancouver, British Columbia

“Original signed by Gareth Reeves”

Gareth Reeves
Hearing Officer