

**IN THE MATTER OF AN APPEAL TO THE APPEAL COMMITTEE
OF THE CANADIAN INVESTOR PROTECTION FUND**

RE: [REDACTED] and [REDACTED]

Heard: August 19, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

Nicolas Businger

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On her own behalf and on behalf of
) [REDACTED]

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] and [REDACTED] (the “Appellants”) were clients of First Leaside Securities Inc. (“FLSI”), an investment dealer through which over 1,200 customers made investments in various affiliated companies, trusts and limited partnerships (collectively the “First Leaside Group”). FLSI was registered with the Ontario Securities Commission (“OSC”) and was a member of the Investment Industry Regulatory Organization of Canada (“IIROC”). It was also a member of the Canadian Investor Protection Fund (“CIPF” or the “Fund”) until its suspension by

IIROC on February 24, 2012, being the same date that FLSI was declared to be insolvent and sought protection under the *Companies' Creditors Arrangement Act*. The relevant history leading up to these events and the role of CIPF with respect to claims to the Fund are set out in detail in the Appeal Committee's decision in relation to an appeal heard on October 27, 2014.¹

2. The Appellants sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellants were entitled to protection through the Fund which was established to provide coverage in the event of insolvency. CIPF Staff made a decision denying compensation to the Appellants on the basis that the Appellants' losses did not arise as a result of the insolvency of FLSI and thus were not covered under the CIPF Coverage Policy dated September 30, 2010.

3. On August 19, 2015, an Appeal Committee Member of CIPF's Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The appeal hearing was held at Neeson Arbitration Chambers in Toronto, Ontario. The Appellant, [REDACTED], was in attendance by teleconference. She represented both herself and [REDACTED] and made submissions on behalf of both Appellants.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from the Appellants' purchase by [REDACTED] of \$200,000 in units of First Leaside Wealth Management Fund and the purchase by [REDACTED] of \$42,000 in units of First Leaside Properties Fund (Class B). [REDACTED] claim was reduced by \$13,276.90 on account of distributions from the insolvency trustee, reducing her claim to \$186,723.10.

5. Certificates representing the Appellants' purchases were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC ("Fidelity").

(ii) The Appellants' Application for Compensation

¹ This decision is available on the CIPF website and will be referenced throughout as the "October 27, 2014 decision".

6. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By separate letters dated February 18, 2015, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant parts of the letters read as follows:

Regarding your claim for unlawful conversion, it does not appear to us that any property held by FLSI for you was converted or otherwise misappropriated.

...losses caused by dealer misconduct, compliance failures or breaches of securities regulatory requirements in respect of the distribution of securities are not covered by CIPF. The securities that you purchased were subject to the disclosure of an offering memorandum or other offering documentation which, among other things, disclosed the risks relevant to the purchase and the investment. These investments, like any securities, were subject to market forces and, unfortunately, your loss appears to have been a loss caused by a change in the market value of your investments and not a loss resulting from the insolvency of FLSI.

Analysis

7. [REDACTED] commented on how the loss of their investments has had a detrimental impact on their retirement. She advised that not only were the First Leaside Group products advertised as being covered by CIPF insurance, but this was repeated in assurances from their advisor. This gave the Appellants more confidence in investing with FLSI. She also stated she did not understand why the letter from CIPF Staff explained that the loss in the investment was caused by a decline in market value (rather than the insolvency), when the securities were not listed on a market.

8. Counsel for CIPF Staff explained that for a claim to be eligible, it must arise from the insolvency of the member firm. In the First Leaside Group situation, related entities to the dealer, FLSI, became insolvent at around the same time as FLSI. The Appellants' losses arose from the insolvency of the related entities, as they were ones who had received the invested funds and issued securities in exchange therefor. Although the securities were not listed on a market, they still had value which had been determined by the entity itself. In almost all cases, those values continued to

show as the original investment value and did not change until the time of the insolvency, when the value shown by the carrying broker was changed to N/A (not available).

9. CIPF's mandate and its coverage does not relate to the value of a security. Rather it is custodial in nature; in other words, to ensure that the clients of an insolvent member have received their property. This custodial coverage is set out in CIPF's mandate, which is approved by the OSC and other provincial securities regulators. The mandate is restricted to this coverage, and does not extend to coverage for fraud, material non-disclosure and/or misrepresentation. The nature and extent of the coverage is discussed in full in the October 27, 2014 decision.

10. The Appellants' written submissions raised arguments similar to those advanced at the October 27, 2014 appeal hearing with respect to the timing of the investment. Those arguments relate to allegations of fraud, material non-disclosure and misrepresentations by FLSI during the period within which the First Leaside Group was under investigation by the OSC. The main position advanced was that funds given to FLSI to invest in securities of the First Leaside Group were unlawfully converted by FLSI and as such, the Fund should provide coverage. The October 27, 2014 decision deals extensively with this and other arguments which were raised. This Appeal Committee adopts the reasoning in the October 27, 2014 decision.

11. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellants' position, I conclude that their submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

12. The appeal is dismissed. The decision of CIPF Staff is upheld..

Dated at Toronto, this 2nd day of September, 2015.

Brigitte Geisler