

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

RE: [REDACTED] and [REDACTED]

April 22, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

)

Counsel for Canadian Investor
Protection Fund Staff

)

[REDACTED]

)

On behalf of himself and [REDACTED]

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”) (together, 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 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 dated 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 April 22, 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 took place at Neeson Arbitration Chambers in Toronto, Ontario. Pursuant to written authorization given by [REDACTED], [REDACTED] represented both of the Appellants.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellants' purchases of First Leaside Wealth Management Fund as follows:

- a. Purchase of 10,095 units of First Leaside Wealth Management Fund for \$10,095 on April 11, 2011 in the account of [REDACTED]; and
- b. Purchase of 10,095 units of First Leaside Wealth Management Fund for \$10,095 on April 11, 2011 in the account of [REDACTED].

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

5. The Appellants allege that they each invested \$10,190 in the First Leaside Wealth Management Fund. They have also received a return of capital \$921.50 each on three occasions in 2012 and 2013 from Penson Financial Services Canada and Fidelity Clearing Canada ULC. Accordingly, the net claim for each of the Appellants is for \$9,173.50.

6. On behalf of both Appellants, [REDACTED] confirmed that the certificates for these units were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC (“Fidelity”) following FLSI’s insolvency.

(ii) The Appellants’ Application for Compensation

7. The Appellants applied to CIPF on August 26, 2013 for compensation for their losses in investments made through FLSI. By letters dated November 20, 2014, 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. 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 or the conversion of your property.

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.

In addition, with respect to the securities that you purchased, they were properly recorded in the books and records of FLSI at the date of insolvency. Those securities were transferred to an account at another IIROC Dealer Member subsequent to February 24, 2012. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

You have also indicated that your loss, or part of it, was a result of “the default of an issuer of securities”. As mentioned above, losses resulting from the default of an issuer of securities are not covered by CIPF.

Analysis

8. ██████ raised arguments similar to those advanced at the October 27, 2014 hearing. Those arguments related to allegations of possible fraud, material non-disclosure and misrepresentations by FLSI. 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.

9. One of the main arguments focused on the interpretation of the phrase “including property unlawfully converted” in the Coverage Policy. ██████ argued that the funds they invested were to have been invested in proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate products. Instead, he alleged, the monies were diverted into the hands of the principals of FLSI, used to pay earlier investors, or otherwise fraudulently deployed. The Appellants did not provide any evidence with respect to these allegations. In any event, the Appeal Committee is of the view that the adoption of these arguments suggests that the Appellants’ claims are really of fraud, material non-disclosure and/or misrepresentation which does not fall within the meaning of the phrase "including property unlawfully converted" as was discussed fully in the October 27, 2014 decision. Such an interpretation would in effect create a new head of coverage.

10. ██████ submitted that while their investments were made prior to the Grant Thornton Report, they were made while FLSI was under investigation by the OSC. He expressed his concerns about the timing of these events: the making of the investments, the OSC investigations and the Grant Thornton Report. He opined that the various actions taken by the regulators and CIPF were not to the benefit of the investors. He also expressed the concern that the appeal process involved a conflict of interest on the part of the Appeal Committee Member. Staff Counsel pointed out that the Appeal Committee is separate from Staff and is not aware of any staff investigations or processes, being privy only to the information filed by Staff for the hearing, which was the same information that was provided to the Appellants.

11. The purpose of CIPF coverage is limited to custodial coverage; in other words, to ensure that the clients of an insolvent member have received their property. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitations on coverage. [REDACTED] confirmed that the certificates representing his investments were transferred to accounts in the Appellants' names .

12. 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

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

Dated at Toronto, this 24th day of April, 2015

Brigitte Geisler

Brigitte Geisler