

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

RE: [REDACTED] **AND** [REDACTED]

Heard: 14 April 2015

PANEL:

ANNE WARNER LA FOREST

Appeal Committee Member

APPEARANCES:

[REDACTED]

)
)

On behalf of himself and [REDACTED]

[REDACTED]

James Gibson

)
)

Counsel for Canadian Investor
Protection Fund Staff

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] (also referred to below as “[REDACTED]”) and [REDACTED] (also referred to below as “[REDACTED]”) (together, the “Appellants”) were clients of First Leaside Securities Inc. (“FLSI”), an investment dealer through which over 1200 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 it was suspended by IIROC on February 24, 2012, the same date 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 following investments were made by the Appellants:

- i [REDACTED] purchased 36,730 units of First Leaside Wealth Management Fund on December 23, 2010 for a total investment of \$36,730; and
- ii [REDACTED] purchased 13,270 units in First Leaside Wealth Management Fund on December 10, 2010 for a total investment cost claim of \$13,270.

3. The Appellants sought recovery from the CIPF on the basis that FLSI was a Member of CIPF and as such the Appellant was 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 Appellant on the basis that the Appellant's 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.

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

4. On April 14, 2015, an Appeal Committee Member of CIPF's Board heard the Appellants' appeals. The main issue in each appeal was whether to depart from the decision of CIPF Staff that denied compensation for losses suffered by the Appellants. The appeals were scheduled to be heard together by means of teleconference.

Chronology of Events Relevant to the Appellants' Claims

5. As noted above, [REDACTED] had purchased 36,730 units in First Leaside Wealth Management Fund in December 2010. This investment was held "on book" in a registered retirement account and was transferred to Fidelity in December of 2012 following FLSI's insolvency along with a dividend in the amount of \$2,474.80. While [REDACTED] did not recall whether the units in the First Leaside Wealth Management had in fact been transferred to Fidelity, it is clear from the materials submitted by CIPF Staff that the receiver had acknowledged [REDACTED] right to these units.

6. Similarly, [REDACTED] had purchased 13,270 units in First Leaside Wealth Management Fund in December 2010. This investment was held on book in a registered retirement account and was transferred to Fidelity in December of 2012 following FLSI's insolvency along with a dividend amount of \$829.85. Again, while there was some debate about whether these units had been transferred to Fidelity, the materials submitted by CIPF Staff make it clear that the receiver had acknowledged that the units belonged to [REDACTED].

7. The Offering Memorandum relating to the investments in First Leaside Wealth Management Fund provided the Fund with authority to deal with the First Leaside Management Notes and to deal with any member of the First Leaside Group.

8. From [REDACTED] testimony it became clear that the Appellants believed that the investments they had made were the equivalent of a Guaranteed Investment Certificate ("GIC"). They had reached this conclusion on the basis of representations that had been made to the effect that the return on their investment was guaranteed to be 7 percent. Their understanding was that they would receive the cash back from their investment along with the 7 percent return. The fact that the CIPF and IIROC logos also led them to make this assumption.

9. The investments made by the Appellants were made in the period following which the OSC had begun to investigate FLSI and after the OSC sought third party market valuations of the real property held by limited partnerships owned by the First Leaside Group. Those reports were received by the First Leaside Group in January 2011. Investors were not told that the First Leaside Group, including FLSI, was under investigation by the OSC. The Appellants were not advised until November 2011 that the OSC had been investigating FLSI.

The Appellants' Application for Compensation

10. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI prior to the October 12, 2013 deadline for submitting claims that was set by the CIPF Board of Directors. The Appellants also provided additional information regarding the claim and specifically, they attached a separate "Schedule A" to the claim forms dated October 7, 2013.

11. By letters dated October 20, 2014, the Appellants were advised that CIPF Staff was unable to recommend payment of their claims. While each Appellant received a separate letter, the relevant parts of these letters is identical and provides 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...which...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 in your name 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.

12. The Appellants also provided additional materials dated April 3, 2015.

Analysis

13. The Appellants made arguments in their correspondence in their claim forms dated October 7, 2013. These arguments were identical to those that were addressed in the October 27, 2014 decision and in this regard, we rely upon our analysis in that decision at paragraphs 27 through 49.

14. During the course of the hearing, the main arguments that were put forward on behalf of the Appellants were based upon the materials that had been submitted in early April 2015. First, the Appellants stated that their assumption was that the investment in the First Leaside Wealth Management Fund was the same as a GIC of the kind that would be guaranteed by the Canadian Deposit Insurance Corporation. It is clear from the Offering Memorandum relating to the First Leaside Wealth Management Fund that there were risk factors associated with investing in the Fund and that the return of 7 percent was not in fact guaranteed. It may well be that representations were made to the Appellants by individuals at FLSI to the effect that the investments were guaranteed. However, the Coverage Policy does not cover misconduct by its members; CIPF coverage is to return property that should otherwise be in a client's account at the time of insolvency. There was no evidence that CIPF had guaranteed the Appellants' investments in the Fund.

15. Second, the Appellants argued that while their dividends from the Fund had been accounted for, their investments in the units in First Leaside Wealth Management Fund were missing. This argument was based upon one page of a three page statement from Fidelity. Because the statements before the Appeal Committee were incomplete, counsel for CIPF Staff asked [REDACTED] whether he could recall whether there had been entries in relation to the Fund on the other pages of the statement. He did not recall any such entries. In the end, it is not necessary to draw any conclusion in this regard. The fact is that the receiver had, in the case of both Appellants, acknowledged the existence of these units and acknowledged the Appellants' claim to the property after the date of insolvency. Thus, the Appellants' property was in their account with First Leaside at the date of insolvency and the Coverage Policy does not apply.

16. The Appeal Committee has considerable sympathy for the Appellants. Unfortunately, their submissions do not give rise to a successful claim for compensation from CIPF.

Disposition

17. The appeal is dismissed. The decision of the CIPF Staff is upheld.

Dated at Toronto, this 28th day of April, 2015.

Anne Warner La Forest