

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

RE: [REDACTED]

[REDACTED]

May 11, 2015

PANEL:

Patrick J. LeSage

Appeal Committee Member

APPEARANCES:

[REDACTED]

Appellants, on their own behalf

[REDACTED]

James Gibson

**Counsel for the Canadian Investor
Protection Fund Staff**

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 dated October 27, 2014.¹

2. Each of the Appellants invested in First Leaside Group entities on October 22, 2010 through FLSI. Each investment was made for their respective RRSP accounts. His investment was \$57,075. Her investment was \$52,892.

3. 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. On June 18, 2014, CIPF Staff denied 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.

4. The Appellants requested that this appeal be considered on the basis of written materials, which they provided. As well, they relied on the arguments raised by Representative Counsel for the Investors of FLSI, which are referred to in the October 27, 2014 decision, in particular paragraphs 27 to 49. The Appellants made additional submissions orally.

5. The Appellants advise that they were first contacted by telemarketers and were told they would receive a 7 – 8% return on their investments. To confirm their “bona fides”, the telemarketers put them in touch with a University of Toronto professor and others who had successfully invested in First Leaside product. The Appellants also advised “all the literature they received ... assured that our money was protected by CIPF”. With that knowledge, “we went ahead and invested...”. When asked by counsel for CIPF Staff, they acknowledged they had been given a CIPF brochure. They read it as containing what they described as “the guarantee”.

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

6. Reference was made to a document that each received, which can be found in the Appeal Book, Volume 1, Tab A10, page 53.

7. That document is described as “THE FIRST LEASIDE SOLUTION” followed by a sub-heading, “THE NEED FOR EXEMPLARY COMPLIANCE”. The same page displays the logos of each of CIPF, IIROC and KPMG. The document states in part:

Clients also need to be assured that their invested wealth is secure. As a smaller firm, we recognize that our business model must address the perception among some retail investors that larger firms provide greater protection of client assets than smaller firms.

For this reason in 2004, First Leaside Securities Inc. became a member of the Investment Dealers Association of Canada ... now the Investment Industry Regulatory Organization of Canada (IIROC). IIROC membership enables the firm to participate in the Canadian Investor Protection Fund (CIPF) set up by the investment industry to ensure the return of customers’ securities, cash balances and certain other property within defined limits if an investment dealer that is a CIPF member is not able to do so because it is bankrupt.

CIPF is the great brokerage firm equalizer. Smaller firms become, in a sense, more secure than larger ones, because the bankruptcy of a smaller firm has less potential to exhaust the fund before all of the firms’ clients receive the maximum allowable coverage for their accounts. However, relatively few bankruptcies have occurred among investment dealers given their adherence to exacting CIPF and IIROC compliance standards.

8. [REDACTED], when asked if he read that page, responded, “yes, we were misled as were all the others”. I understood him to mean that this document along with the oral assurances he had received and the fact that the aforementioned document is a “First Leaside” creation, makes it difficult to distinguish between FLSI, the broker, and the First Leaside Group product, in which he/ they were investing.

9. I understand the difficulty.

10. The Appellants acknowledge the money that was in their accounts at FLSI and any certificates representing their investments at the days of FLSI’s insolvency were

transferred to Fidelity.

11. CIPF coverage is limited to custodial coverage. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitation on coverage. Any misrepresentations of the coverage that may have been made were not made by CIPF but by FLSI and/or the promoters of the First Leaside Group who were selling the product. Oversight of brokers is primarily the jurisdiction of IIROC with additional oversight by the Ontario Securities Commission.

12. As in earlier decisions, while I have sympathy for the Appellants' position, it does not change the fundamental fact that their appeal does not meet the requirement of establishing a valid legal claim for coverage under the terms of the CIPF program.

13. These appeals must therefore be dismissed. The decisions of the CIPF Staff are upheld.

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

Patrick J. LeSage