

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

RE: [REDACTED] and [REDACTED]

Written Appeal Scheduled: January 15, 2016

APPEAL CONSIDERED BY:

BRIGITTE GEISLER

Appeal Committee Member

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 the day after FLSI 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

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

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. The Appellants requested that their appeals be considered on the basis of written materials which they provided, including an additional written submission dated December 31, 2015.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from the Appellants' investments in various First Leaside Group products for a total net value of \$223,615.48 for [REDACTED] and \$31,311 for [REDACTED]. The Appellants have acknowledged that they have received total payments of \$14,214.28 and \$850.00, respectively, from the insolvency trustee. [REDACTED] claim includes a claim for the purchase of \$21,000 worth of First Leaside Technologies Limited Partnership on November 15, 2005; however, this investment was sold on August 21, 2006 for \$20,950.² Thus, this investment is excluded from [REDACTED] claim reducing his claim to \$10,361.00.

5. Certificates representing the Appellants' purchases were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC or were delivered to the possession of the Appellants.

(ii) The Appellants' Application for Compensation

² The investment was sold for \$21,000 less commission of \$50. See Appeal Record, Volume 1, Tab B-3, p.121.

6. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By separate letters dated July 8, 2014 and June 6, 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.

Analysis

7. In their written submissions, the Appellants raised arguments similar to those advanced at the October 27, 2014 appeal hearing. This included interpretation of the phrase “including property unlawfully converted” in the Coverage Policy, with particular application to investments made after the OSC began investigating the First Leaside Group in 2009. The Appellants submitted that they intended the funds they invested be applied to proprietary First Leaside products for the primary purpose of funding the acquisition and/or development of various real estate projects; instead, these funds were unlawfully converted by FLSI for its own use.

8. It is noteworthy that [REDACTED] made her first investment on October 22, 2008. Of her total claim, approximately \$182,000 was invested before 2010. Half of [REDACTED] remaining claim relates to an investment in February 2009, the other half of his claim was an investment in 2010. Consequently, a majority of the claims relate to investments made prior to the start of the OSC investigation in the fall of 2009. [REDACTED] also notes that she invested \$30,377 following the receipt of the Grant Thornton Report by FLSI.

9. These written arguments are focused on the making of investments during the time period following the commencement of the OSC investigation into the First Leaside Group, although [REDACTED] [REDACTED] has included all of the investments that she has made within this argument. In effect, these arguments suggest that the Appellants' claims are really of fraud, material non-disclosure and misrepresentations. However, as was discussed fully in the October 27, 2014 decision, these arguments do not lead to the conclusion that what happened in this case falls within the meaning of the phrase "including property unlawfully converted" as set out in the Coverage Policy. Such an interpretation would, in effect, create a new head of coverage.

10. It is important to understand the origins of CIPF and the restrictive nature of CIPF coverage. CIPF's mandate is to provide coverage that is custodial in nature; in other words, to ensure that the clients of an insolvent member have received their property. The Appellants have received their property; accordingly the issue of CIPF coverage is not applicable. It is most unfortunate that the value of the property is uncertain; however, the Coverage Policy clearly states that CIPF does not cover "changing market values of securities, unsuitable investments, or the default of an issuer of securities".

11. As stated above, CIPF coverage is to ensure that property is returned to Members' customers. It does not extend beyond that to include a "guarantee" of the principal of the investment. It is not an insurance scheme to cover fraud, like the one that can be found in Quebec. In fact, the existence of the Quebec fund confirms the narrowness of CIPF coverage in that the Quebec government realized that there was a gap in coverage for investor losses as a result of fraud and has provided limited coverage.

12. The October 27, 2014 decision deals extensively with the written arguments which were raised. This Appeal Committee adopts the reasoning in the October 27, 2014 decision. I have sympathy for the losses suffered by the Appellants; however, I conclude that the Appellants' submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

13. The appeals are dismissed. The decisions of CIPF Staff are upheld.

Dated at Toronto, this 19th day of January, 2016.

Brigitte Geisler