

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

**RE:** [REDACTED] and [REDACTED]

**Heard: October 23, 2015, by teleconference**

**HEARD BEFORE:**

BRIGITTE GEISLER

Appeal Committee Member

**APPEARANCES:**

Nicolas Businger

)

Counsel for Canadian Investor  
Protection Fund Staff

)

[REDACTED]

)

On his own behalf

)

On her own behalf

**DECISION AND REASONS**

**Introduction and Overview**

1. [REDACTED] and [REDACTED] (collectively, 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.<sup>1</sup>

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 October 23, 2015, an Appeal Committee Member of CIPF's Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The Appellants were in attendance by teleconference.

### **Chronology of Events Relevant to the Appellants' Claim**

#### *(i) The Appellants' Investments and Claim*

4. The claim arises from the Appellants' purchases of various First Leaside Group products for a total net claim by ██████████ of \$621,280 and by ██████████ of \$232,038. These claims include claims for stock dividends and undocumented amounts<sup>2</sup> and are reduced by distributions received from the insolvency trustee.

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

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

<sup>2</sup> Claims in the amounts of \$9,251 and \$6,784 for ██████████ and ██████████, respectively, could not be verified by CIPF staff, but were acknowledged by the insolvency trustee, and are included in the total net claim amounts.

(ii) *The Appellants' Application for Compensation*

6. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By separate letters dated January 16, 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. ██████████ related how he had come to be an investor at FLSI, noting that the assurances of CIPF coverage were persuasive in his decision to invest. He described their investment objectives as relatively modest. He noted that he and his wife were encouraged to invest additional funds even after the Grant Thornton report had been completed in August, 2011. He was particularly disturbed that Mr. Wilson, a principal of FLSI, had lied to him stating that FLSI was prohibited by the OSC from revealing the Grant Thornton report. He also opined that the First Leaside Group was probably technically insolvent for a considerable period prior to the actual insolvency date.

8. ██████████ urged the Appeal Committee to “do right by investors” by exercising its discretion in favour of investors who had lost money at FLSI. He described the principals of FLSI as crooks who were represented by CIPF.

9. Although the CIPF logo appears on FLSI documentation, as required by IIROC rules, it does not follow that CIPF represents or has a relationship with member firms in the same way as a regulator. CIPF is not a regulatory body; it has no powers to investigate or to discipline member firms. That authority lies within IIROC or the OSC.

10. CIPF's mandate and its coverage 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 property has lost almost all of its value, 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. In their written submissions, the Appellants raised arguments similar to those advanced at the October 27, 2014 hearing. This included interpretation of the phrase "including property unlawfully converted" in the Coverage Policy. The Appellants argued that they understood that the funds they invested were to have been invested in proprietary First Leaside products for the primary purpose of funding the acquisition and/or development of various real estate projects. They were unaware that the Offering Memoranda permitted the investment into other First Leaside Group entities.

12. These arguments suggest 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.

13. The October 27, 2014 decision deals extensively with the Appellants' arguments and the reasoning in the October 27, 2014 decision is adopted by this Appeal Committee. As in the October 27, 2014 decision, while expressing considerable sympathy for the position of the Appellants, 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**

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

Dated at Toronto, this 2<sup>nd</sup> day of November, 2015.

*Brigitte Geisler*