

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

**RE:** [REDACTED]

**Heard: February 23, 2015**

**HEARD BEFORE:**

BRIGITTE GEISLER

Appeal Committee Member

**APPEARANCES:**

James Gibson

)  
)

Counsel for Canadian Investor  
Protection Fund Staff

[REDACTED]

)  
)

On their own behalves

**DECISION AND REASONS**

**Introduction and Overview**

1. [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 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 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.<sup>1</sup>

2. FLSI was declared to be insolvent on February 24, 2012. [REDACTED] invested \$50,000 in 50,000 units of First Leaside Expansion Limited Partnership on July 29, 2010. [REDACTED] invested a total of \$200,000 in 200,000 units of First Leaside Wealth Management Fund on May 11, 2011 and September 22, 2011. 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 February 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 appeal hearing took place at Neeson Arbitration Chambers in Toronto, Ontario and was open to the public. The Appellants were in attendance.

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

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

4. The claim arises from the Appellant [REDACTED] purchase of 50,000 units of First Leaside Expansion Limited Partnership for \$50,000 on July 29, 2010 and the purchase by both of the Appellants of 181,221 units of First Leaside Wealth Management Fund on May 11, 2011 and a further 18,779 units on September 22, 2011 for \$200,000. Certificates representing the ownership of these funds were delivered to the Appellants. The Appellants have submitted a claim to the insolvency Trustee and have received a distribution of \$13,276.90 on August 7, 2013.

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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".

(ii) *The Appellants' Application for Compensation*

5. The Appellants applied to CIPF on October 7, 2013 for compensation for their losses in investments made through FLSI. By letter dated May 28, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claim. The relevant part of the letter reads 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. In addition, as a basis for explaining your claim, you stated: "We were told that our investment was guaranteed and 100% covered by CIPF". We take note of your explanation. However, 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.

In addition, at the date of insolvency, the securities ... were not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

**Analysis**

6. The Appellants confirmed that they had received the certificate which represented their investments in the First Leaside Group. CIPF Staff explained the nature of CIPF's custodial coverage regime which ensures that customers receive their property from the member firm, in the event of an insolvency. The Appellants also confirmed that they had made a claim with respect to their investments with the insolvency Trustee, and had received a payout of \$13,276.90, which they believed, related to both securities. They also confirmed that they had received distributions for their investments, for all but the last security purchased on September 22, 2011.

7. The Appellants advised that they had been reassured by comments from FLSI with respect to CIPF coverage, which caused them to believe that coverage would be applicable in the event of a

default by the issuer. Clearly, such an assertion is inconsistent with the purpose and mandate of CIPF. While guidelines for the use of CIPF material are prescribed, CIPF is not in a position to monitor any misinformation which may be provided by individuals employed in the investment industry.

8. The Appellants also commented on the role of the regulators, particularly IIROC. While it was agreed that IIROC reviewed and monitored the financial position of the FLSI, the member of IIROC, it had no responsibility or ability to do the same for any of the First Leaside Group of companies which were security issuers in their own right.

9. The Appellants also addressed the matter of the timing of some of their investment which took place between the time of the Grant Thornton Report on August 22, 2011 and November 7, 2011 when FLSI wrote to its investors. They expressed their disappointment that the regulators were conducting an investigating arising from concerns with the First Leaside Group, and had received a report confirming those concerns, and yet investments continued to be made during this time. CIPF Staff and the Appeal Committee both expressed their sympathies with the Appellants' position.

10. The facts of this case have a similarity to those of the Appellant in the October 27, 2014 Appeal Hearing with respect to the timing of the investment. The Appellants in this case also 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. The October 27, 2014 decision deals extensively with this and other arguments which were raised. This Appeal Committee adopts the reasoning in the October 27, 2014 decision.

11. 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**

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

Dated at Toronto, this 27<sup>th</sup> day of February, 2015

Brigitte Geisler

Brigitte Geisler