

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

**RE: [REDACTED]**

**May 21, 2015**

**WRITTEN APPEAL CONSIDERED BY:**

BRIGITTE GEISLER

Appeal Committee Member

**DECISION AND REASONS**

**Introduction and Overview**

1. [REDACTED] (the “Appellant”) was a client 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 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 heard on October 27, 2014 with its reasons released on December 17, 2014.<sup>1</sup>

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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”.

2. The Appellant sought recovery from 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.

3. The Appellant requested that his appeal be considered on the basis of written materials which he provided. He authorized [REDACTED] to act on his behalf.

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

#### *(i) The Appellant's Investments and Claim*

4. The claim arises from the Appellant's purchases of various First Leaside Group products as follows:

- i. 14,285 units of Wimberly Apartments Limited Partnership, purchased for a cost of \$9,995 on October 14, 2010. A further claim arising out of acquisition of units in this fund at an unknown date and purchase cost is made for 15,000 units;
- ii. 10,000 units of First Leaside Properties Fund (Class B) purchased for a cost of \$10,000 on October 15, 2010; and
- iii. 10,000 units of First Leaside Realty Limited Partnership for which no purchase date or cost is available, however a claim for \$2,471.49 is made.

5. All of the certificates for these securities were delivered into the possession of the Appellant.

#### *(ii) The Appellant's Application for Compensation*

6. On August 27, 2013, the Appellant applied to CIPF for compensation for his losses in investments made through FLSI. By letter dated June 3, 2014, the Appellant was advised that CIPF

Staff were unable to recommend payment of his claim. The relevant parts of the letter 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.

In addition, at the date of insolvency, the securities described in the table below<sup>2</sup> 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

7. The Appellant raised arguments similar to those addressed in the October 27, 2014 decision. 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.

8. One of the Appellant's main arguments focused on the interpretation of the phrase "including property unlawfully converted" in the Coverage Policy. The Appellant argued that the funds he invested were to have been invested in proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate products. The Appeal Committee is of the view that the adoption of these arguments suggests that the Appellant's claim is really of fraud, material non-disclosure and/or misrepresentation which does not fall within the meaning of

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<sup>2</sup> See paragraph 4 for details.

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.

9. The purpose of CIPF coverage is limited to custodial coverage; in other words, to ensure that the clients of an insolvent member have received their property. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitations on coverage. The documentation provided by the Appellant confirms that certificates representing his investments were delivered to his possession.

10. The October 27, 2014 decision deals extensively with the Appellant’s arguments. This Appeal Committee adopts the reasoning in the October 27, 2014 decision. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellant’s position, I conclude that his submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

**Disposition**

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

Dated at Toronto, this 25th day of May, 2015

Brigitte Geisler

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