

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

RE: [REDACTED] and [REDACTED]

Heard: August 18, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

Maureen Doherty

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Counsel for Canadian Investor
Protection Fund Staff

[REDACTED]

On their own behalves

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 in relation to an appeal heard on October 27, 2014.¹

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 August 18, 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 was held at Neeson Arbitration Chambers in Toronto, Ontario. 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 Appellants' purchases of units of First Leaside Expansion Limited Partnership and First Leaside Properties Fund (Class B and Class C) for a total claim by [REDACTED] of \$235,159 and a total net claim of \$39,188 by [REDACTED]. [REDACTED]'s claim includes a claim for stock dividends and undocumented amounts for a total of \$4,030.

5. Certificates representing the Appellants' purchases were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC, with the exception of a certificate for 150,001 units of First Leaside Expansion Limited Partnership which was delivered to the possession of [REDACTED].

¹ 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*

6. The Appellants separately applied to CIPF for compensation for their losses in investments made through FLSI. By letters dated February 18, 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 breach 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. The Appellants presented a promotional document for the First Leaside Expansion Partnership, pointing out that the CIPF and IIROC logos were prominent. The Appellants advised that they believed that the CIPF coverage was such that their investment would be safe. It was noted that the CIPF logo was in a separate box which related to FLSI, although it was agreed that its prominence was likely misleading to the investor. CIPF provides strict guidelines as to the usage of its logo and has produced a brochure for Members to use to describe the limitation in its coverage. If misrepresentations as to coverage were made, those were by FLSI or the First Leaside Group, which are subject to the oversight of IIROC and the OSC, respectively. CIPF is not a regulatory body.

8. The Appellants noted that their investment was to provide funding with respect to the new office building in Uxbridge which was being built by the First Leaside Group. [REDACTED] advised that he was puzzled that he was receiving payments from the project even though the tower was not

yet built and that this caused some concern at the time. He also expressed the opinion that assets, especially liquid assets were wastefully consumed by the insolvency trustee with the result that funds belonging to investors were impaired. He further noted that Messrs. Wilson and Philips had been disciplined by the regulators.

9. The Appellants advised that they were participating with other investors in the group that was attempting to salvage some of the projects and were hopeful that this would yield a more positive result.

10. The written submissions of the Appellants included the arguments raised by representative counsel at the October 27, 2014 appeal hearing. The October 27, 2014 decision addressed the arguments relating to the interpretation of the phrase “including property unlawfully converted” in the Coverage Policy. The Appellants argued that the funds they 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 projects.

11. The adoption of these arguments suggests 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.

12. 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. This custodial coverage is set out in CIPF’s mandate, which is approved by the OSC and other provincial securities regulators. The mandate is restricted to this coverage, and does not extend to coverage for fraud, material non-disclosure and/or misrepresentation. The nature and extent of the coverage is discussed in full in the October 27, 2014 decision.

13. While I have considerable sympathy for 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 appeal is dismissed. The decision of CIPF Staff is upheld.

Dated at Toronto, this 31st day of August, 2015.

Brigitte Geisler