

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

RE: [REDACTED]

Heard: February 19, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On his own behalf

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 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, 2014.¹

2. FLSI was declared to be insolvent on February 24, 2012. The Appellant invested \$100,001 in 100,001 units of First Leaside Venture Limited Partnership on October 7, 2011. 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. On February 19, 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 Appellant was in attendance.

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellant's investments in 100,001 units of First Leaside Venture Limited Partnership on October 7, 2011. A certificate representing the ownership of this fund was delivered to the Appellant.

(ii) The Appellant's Application for Compensation

5. The Appellant applied to CIPF on August 7, 2013 for compensation for his losses in investments made through FLSI. By letter dated June 27, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

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

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 security that you purchased was 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. The investment, like any security, was 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. 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 security described in the table below was 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 Appellant confirmed that he had received the certificate which represented his investment in the First Leaside Venture Limited Partnership. 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 Appellant also confirmed that he had made a claim with respect to his investment with the insolvency Trustee, but to date, has not received any distribution therefrom.

7. The Appellant addressed the matter of the timing of his 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. He expressed his 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 Appellant's position.

8. 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 Appellant 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.

9. 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

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

Dated at Toronto, this 20th day of February, 2015

Brigitte Geisler

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