

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

RE: [REDACTED]

Heard: September 1, 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 (“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 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 September 1, 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. The Appellant was in attendance.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the purchase by the Appellant of 177,000 units of Wimberly Fund (Class B, Series 8%) units for a purchase price of \$177,000 on November 1, 2010. The Appellant is also claiming interest in the amount of \$164.00 for a total claim of \$177,164. The securities in the name of the Appellant were transferred to an account in his name at Fidelity Clearing Canada ULC.

(ii) The Appellant's Application for Compensation

5. The Appellant applied to CIPF for compensation for his losses in investments made through FLSI. By letter dated September 16, 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:

.... 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

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

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, with respect to the securities that you purchased, they were properly recorded in the books and records of FLSI at the date of insolvency. Those securities were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

6. The Appellant noted that inducements had been made by the principals of FLSI to encourage investment in First Leaside Group products. These inducements included assurances that there was CIPF coverage for their investments, which gave them more confidence in investing with FLSI. The Appellant stated that he had relied upon the CIPF brochure and statements that insolvency was rare in the securities industry. The Appellant also commented that he was reassured in that FLSI's board of directors included at least one prominent Canadian businessman. The Appeal Committee took note of the comments.

7. The Appellant also expressed his view that, in addition to the inducements, FLSI misrepresented the nature and quality of the investment that he ended up purchasing. He states that he was advised that the property was in Canada, not in Texas and that it was an extended care facility, rather than an apartment building. He notes that at the time of his purchase, the First Leaside Group was under investigation by the OSC; the principals of FLSI knew that there were issues, but failed to communicate any information to the investors until November, 2011. He felt that everything related to the First Leaside Group was a total fraud and that basically, "it was like a hold-up". He submitted that compensation should be forthcoming on this basis.

8. The Appellant noted that investors in other securities fraud situations such as Norbourg and Earl Jones had received compensation. CIPF staff counsel advised that none of this compensation

came from CIPF as Norbourg was not an IIROC member and Earl Jones had never been registered in any capacity. The Appellant was also directed to the CIPF brochure (which he had provided), which states that: “CIPF doesn’t cover losses from market fluctuations, or from the bankruptcy of an issuer of a security or deposit instrument held in your account, no matter how drastic or unfortunate”.

9. CIPF’s mandate and its coverage does not relate to the value of a security. Rather it 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.

10. The Appellant made a detailed presentation, providing copies of materials for all of the participants, which was appreciated. I have considerable sympathy for the Appellant’s situation, having regard for the circumstances surrounding the making of his investment. However, 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 3rd day of September, 2015

Brigitte Geisler