

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

RE: [REDACTED] and [REDACTED]

Heard: July 20, 2015, by teleconference

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] and her son, [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 July 20, 2015, an Appeal Committee Member of CIPF’s Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The Appellants were in attendance by teleconference, with submissions made primarily by [REDACTED], speaking for himself and the other Appellant.

Chronology of Events Relevant to the Appellants’ Claim

(i) The Appellants’ Investments and Claim

4. The Appellant [REDACTED] has claimed the purchase cost of various First Leaside Group products. The claim includes the purchase cost to acquire units of the following: First Leaside Fund (Series B), First Leaside Select Limited Partnership, Wimberly Apartments Limited Partnership and First Leaside Progressive Limited Partnership. The claim also includes a claim for the value of \$209,600 with respect to units of First Leaside Capital Inc. (Class B) and First Leaside Capital Inc. (Class C) purchased by the late [REDACTED], which claims were recognized by the insolvency trustee. The total claim is reduced by a distribution from the insolvency trustee in the amount of \$54,548.31, resulting in a net claim of \$605,014.85. Of this claim amount, the majority

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

relates to purchases between 1990 and 2007 with \$100,000 relating to two purchases in October, 2009.

5. The Appellant [REDACTED] purchased units of First Leaside Properties Fund (Classes B and C) between March 27, 2009 and May 1, 2010. He also claimed for stock dividends for a total claim of \$68,188. The number of Class B units (28,504) and Class C units (39,684) were recognized by the insolvency trustee.

6. [REDACTED]'s securities were either transferred to accounts in her name at Fidelity Clearing Canada ULC ("Fidelity"), or were delivered to her possession. No certificates or information was available with respect to the undocumented claims which were recognized by the insolvency trustee. [REDACTED]'s securities were transferred to accounts in his name at Fidelity.

(ii) The Appellants' Application for Compensation

7. The Appellant [REDACTED] applied to CIPF on October 28, 2013 for compensation for her losses in investments made through FLSI. By letter dated December 10, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of her claims. 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. In addition, as a basis for explaining your claim, you stated:

- "[...] FL never mentioned any cash flow issues or negative returns from the properties."
- "Unfortunately, the abrupt closure of FL, in 2011 by IIROC/OSC, did not allow time for even a partial restructuring of the company."
- "The logo 'CIPF' and also 'IIROC' was printed on all of my investment statements."
- "The risks of the various securities offered through First Leaside were never properly identified."

- “The advertisements of First Leaside were misleading.”
- “The reporting form produced by First Leaside on each property was not done properly.”
- “I contend that the physical location of the piece of paper that represents the investment is totally irrelevant to my claim. The investment was directly controlled by FLSI at all relevant times. It is the investment itself that was (or should have been) protected by CIPF Membership.”

We take note of your explanations. 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.

8. The Appellant [REDACTED] applied to CIPF on October 11, 2013 for compensation for his losses in investments made through FLSI. By letter dated January 19, 2015, 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.

Analysis

9. ██████████ advised that the monies invested with the First Leaside Group represented the beginnings of his own retirement fund and retirement monies for his mother, ██████████. Her late husband, ██████████ was one of the original investors with First Leaside; investments made before 2008 were made by him. Two additional investments were made by her in October, 2009 for a total of \$100,000. She advised that Mr. Philips, a principal of FLSI had persuaded her to obtain a mortgage for \$100,000, which was then invested in First Leaside Group products. This mortgage remains outstanding.

10. ██████████ advised that he was familiar with the submissions made and the decisions rendered in previous CIPF appeals. He acknowledged that the circumstances of the Appellants' investments were similar to those which had been described in other appeal decisions. He expressed his hope that CIPF would be examining its mandate to consider whether it might be extended to cover matters of fraud like the coverage available in Quebec.

11. Counsel for CIPF staff described the nature of CIPF's mandate and its coverage which 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.

12. There is considerable sympathy for these and other appellants, given the situation in which they find themselves as a result of the events surrounding the First Leaside Group. I am sympathetic with the Appellants' frustration and disappointment with the current outcomes of the regulatory and insolvency processes relating to the First Leaside Group. However, having regard for the CIPF mandate, 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

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

Dated at Toronto, this 22nd day of July, 2015

Brigitte Geisler