

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

RE: [REDACTED]

Heard: July 17, 2015

HEARD BEFORE:

Anne Warner La Forest

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 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. FLSI was declared to be insolvent on February 24, 2012. 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 July 17, 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 was heard by way of teleconference.

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

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investments and Claims

4. The Appellant, [REDACTED], has claimed an amount of \$72,994.95 in relation to the following investments:

- i. 38,571 units in the Wimberley Apartments Limited Partnership ("WALP") purchased on an unknown date. The Appellant makes a claim for \$26,999.70;
- ii. 25,143 units in the F.L. Spring Valley Limited Partnership purchased on an unknown date. The Appellant makes a claim for \$44,000.25; and
- iii. 1,995 units in First Leaside Properties Fund (Class B) purchased on May 20, 2010.

5. CIPF Staff was unable to identify any transactions related to the WALP or F.L. Spring Valley Limited Partnership units in the available accounts statements. CIPF Staff do not have access to account statements created prior to March 1, 2004, the date when FLSI became a member of IIROC. The Appellant has indicated that he purchased the units in WALP and the F.L. Valley Limited Partnership prior to 2004.² Staff reserved the right to request further documentation in the event this Appellant is successful in this appeal. These investments were held "off book". A certificate representing the units in First Leaside Property Fund (Class B) was delivered out to the Appellant on August 9, 2010. The certificates in relation to the WALP units and the F.L. Spring Valley Limited Partnership were not available.

6. The investments made by the Appellant in the WALP and F.L. Spring Valley Limited Partnership units, predate the commencement of the OSC investigation in the fall of 2009. The investment that the Appellant claims was made in May 2010 was made after the commencement of the OSC investigation but before any request for third party valuations of FLSI was made as part of that investigation.

² See FLWMS Account Summary provided by Appellant. Appeal Record, Vol 1, pp.45 and 46.

(ii) The Appellant's Application for Compensation

7. The Appellant applied to CIPF for compensation for his losses in investments made through FLSI prior to the October 12, 2013 deadline for submitting claims that was set by the CIPF Board of Directors. The Appellant also provided additional information regarding the claim on his Claim Forms dated October 11, 2013, and April 4, 2014. The Appellant also provided comments in his correspondence in relation to the First Leaside Property Fund (Class B) certificate dated April 7, 2014.

8. A letter dated December 16, 2014 advised the Appellant that CIPF Staff were unable to recommend payment of his claim. The relevant parts of the letter reads 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 [that were held "off book"] 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.

9. On February 15, 2015 the Appellant instituted an appeal in relation to CIPF Staff's decision.

Analysis

10. The matters raised by the Appellant in his Claim Forms are similar to those that were addressed in the October 27, 2014 decision and in this regard, I rely upon our analysis in that decision at paragraphs 27 through 49.

11. At the hearing, the Appellant noted in particular that he had the sense that representatives of FLSI had exaggerated the protection that was afforded by the CIPF and that the logo of the CIPF was utilized on the documentation presented by representatives of FLSI. It was because of this that many investors believed that the CIPF would provide protection for investors.

12. For his part, counsel for CIPF Staff referred to the Coverage Policy and stated that the CIPF does protect investors in the event of insolvency of a member such as FLSI but the loss that is protected must be one where the CIPF member fails to account for securities or cash held by or in the control of the member. However, the Coverage Policy does not cover misconduct or misrepresentations by FLSI.

13. The role of the Appeal Committee is to assess whether the Appellant's losses fall within the Coverage Policy. In this case, the units in WALP, First Leaside Spring Valley Limited Partnership, and First Leaside Properties Fund have been accounted for and as we have indicated on several occasions, the Coverage Policy does not provide protection for a claim for losses suffered as a result of fraud, material non-disclosure and/or misrepresentations by FLSI. The CIPF does not have control over how the scope of coverage is described by others.

14. The Appeal Committee has considerable sympathy for the Appellant. I do want to note that in his comments, the Appellant was very clear that his intentions in following through with this appeal was to support other investors who had suffered greater losses than he had and to ensure that there would be a record in terms of the conduct of representatives of FLSI. I very much appreciate his efforts. Unfortunately, I am unable on the material before me to find in his favour.

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

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

Anne Warner La Forest