

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

RE: [REDACTED]

Heard: July 27, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On her 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 July 27, 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 Appellant was in attendance.

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investment and Claim

4. The claim arises from the Appellant's purchase of Wimberly Fund Class B Series 8% Designation 2010 for a total cost of \$28,419 on August 6, 2010. The security was transferred to an account in the name of the Appellant at Fidelity Clearing Canada ULC.

(ii) The Appellant's Application for Compensation

5. The Appellant applied to CIPF on August 23, 2012 for compensation for her losses in investments made through FLSI. By letter dated January 13, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of her claim. The relevant parts of the letter read as follows:

CIPF does not cover customers' losses that result from other causes such as dealer misconduct, changing market values of securities, unsuitable investments or the default of an issuer of securities.

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

Analysis

6. The Appellant expressed her concern that the Appeal Committee was a member of the Board of Directors of CIPF, and as such, was not independent. CIPF Staff Counsel advised that the structure of CIPF, which is a not-for-profit entity financed through levies on IIROC Members, provides for an appeal process to the CIPF Board, which has delegated that function to Appeal Committee members. The Appeal Committee further assured the Appellant that Appeal Committee members had no involvement in the processing or adjudication of claims at the CIPF Staff level and were excused from that portion of board meetings that provided any information on the appeals process beyond statistical information.

7. The Appellant stated that she was concerned that all of the previous decisions by CIPF Appeal Committee had denied claims made by investors. She stated that she was “discouraged, disappointed and disillusioned by the other decisions”. She asserted that her claim related to fraud on the part of FLSI, as it was her understanding that she was investing in real estate. She was uncertain as to where her funds had actually gone, expressing the view that the funds may have been used to pay other investors.

8. Counsel for CIPF Staff agreed that there may have been fraud involved with FLSI. The decisions of IIROC and the OSC have also agreed there was fraud with respect to certain behaviours of the principals. However, as was stated in the October 27, 2014 decision, coverage for fraudulent activities is not within the CIPF mandate.

9. 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.

10. The Appellant noted that the CIPF logo was present on documents provided by FLSI, such as the monthly statements. She stated that the presence of the logo provided a level of comfort with respect to the security of her investment. CIPF Staff Counsel noted that the use of the logo and the description of CIPF coverage are prescribed by IIROC rules. He acknowledged that it appears that the principals of FLSI were not forthright in their explanations regarding CIPF and that misleading information regarding CIPF coverage is a serious concern for CIPF Staff.

11. The Appellant stated that since the CIPF logo appeared on FLSI documentation, CIPF should assume responsibility. CIPF Staff Counsel explained the relationship between the various regulatory entities and that IIROC is the main regulator of members such as FLSI. CIPF is not a regulator and does not have the ability to sanction conduct.

12. The Appeal Committee has considerable sympathy for the Appellant's position, however, I conclude that her 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 30th day of July, 2015.

Brigitte Geisler